



TRIAL BY MEDIA: A COMPLETE TRUE IMAGE OR FARCE OR INTRUDING IN JUDICIAL POWERS?

Sangeeta Gahlot

(LL.M. Student)

Rajeev Gandhi Vidhi Mahavidyalaya, TONK-304001

❖ Abstract

Media plays a very significant role in modern life and for the growth of a healthy democracy. It is a great public educator. Many people obtain bulk of their information on matter of contemporary interest from the media. It exercises tremendous influence over millions of people. In this research paper discussed about trial by media in Indian perspective take issue with complete true image or farce or intruding in judicial powers.

❖ Introduction

Freedom of speech and expression is too wide to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. Media, print as well as electronic, is one of the methods of one's right to speech and expression, and it is settled law that the right to speech and expression in Article 19(1)(a) includes freedom of press and media.¹ It plays a very significant role in modern life and for the growth of a healthy democracy. It is a great public educator. Many people obtain bulk of their information on matter of contemporary interest from the media. It exercises tremendous influence over millions of people.

The foundation of a healthy democracy is to have well informed citizens. Media in a free society not only reflects public opinion but also creates public opinion by informative journalism. By exposing political interference, bureaucratic red-tapism, corruption, inefficiency, media can go a long way in making these agencies respond to the need of public interest. Sometimes, a single newspaper or news channel can influence public bodies, policies by discovering and publishing facts which embarrass or discredit the government and its agencies.

The right to know, receive and impart information has been recognized within the fundamental right to freedom of speech and expression.² Media has a fundamental right to use the best means of

¹. Express Newspaper Pvt. Ltd. v. Union of India and Ors AIR 1958 SC 578; Brij Bhushan v. State of Delhi AIR 195 SC 129; Sakal Papers Pvt. Ltd v. Union of India AIR 1962 305; Bata India Ltd. v. A.M. Turaz and Ors (2013) 53 PTC 536 (Del).

². S.P. Gupta v. Union of India AIR 1982 SC 149; Secretary Minister of I&B, Government of India v. Cricket Association of Bengal (1995) 2 SCC 161; also see, Singh Anil, **Right to Information and Democracy: Legal Position in India**, International Journal for Legal Development and Allied Issues, Vol. 1(2), (2015), at p. 30.

imparting and receiving information and as such, to access to telecasting for the purpose. In India, trial by media has assumed significant proportions. Media coverage of trial may also have an educational value.³ It has had both positive and negative results. However many would think that the overall impact is for the betterment of the society. Publications of legal proceedings of courts ensure the accountability of the judiciary and discourage the insidious growth of secret courts. Publicity surrounding cases may serve to discourage perjury and encourage individual to come forward with information vital to the course of justice. There are numerous examples of investigative journalism that can be cited in support of the importance of an open system of justice. 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.⁴ In all these cases, the media played a significant role. Our country has all kinds of injustice and the media can at least highlight them to the advantage of the common man who would be helpless otherwise. But in the reporting of **Aarushi Talwar** case media drew flak, when it pre-empted the Court and reported that her own father Dr. **Rajesh Talwar**, and possibly her mother **Nupur Talwar** were involved in her murder. He was caught up in a swirling rush of cameras and microphones so determined that, as his brother said later on television, “*they were left neither breathing space nor space to walk*”.

The term “*trial by media*” is generally used to describe the impact of television and newspaper coverage on a person’s reputation by creating a wide spread perception of guilt regardless of any verdict in a court of law. Media trial is a threat to the right of fair trial and a blow, at the same time, on the sanctity of the judicial system. By reporting full details of the case, confession of the accused, presenting biased view–point during the tendency of the judicial proceeding, media not only makes inroad into judicial domain but also makes the mockery of court proceedings.⁵

All democratic constitutions make it clear that individual citizen has an inalienable right to a fair trial.⁶ The interference in the judicial process even though an indirect one by a parallel trial in the media is against the fundamental right of fair trial. The media frenzy that surrounds certain news events can give rise to misleading, inaccurate, exaggerate and relentless coverage raising serious questions concerning the issue of prejudicial publicity. Such tendencies consequently encourage trial by media rather than trial by court which is the very antithesis of the rule of law and can lead to miscarriage of justice.

❖ **Media as an Investigating Agency**

Investigation of crime, arrest of accused and collection of evidence are the functions of police. Police is under the duty to take or adopt legal measures in performing all these functions and if it does not

³ Rajnish, **Emergence of Investigative Journalism**, Sumit Enterprises, New Delhi, (2007), at p. 120.

⁴ Malik R.K., *Media Trial in India: Pros and Cons*, IRJCL, Vol. 3(3), (March, 2016), at pp. 8–17.

⁵ Singh A.P. and Mohan Madan, *Media: Facilitating Justice or Hampering Justice?*, Indian Bar Review, Vol. XXXIII, (2006), at p. 237.

⁶ Rajnish, *supra* note 3, at p. 120.

do so, it would be liable for the violation of legal provisions. Now-a-days, just for popularity, media channels start to investigate criminal cases. They tried to prove themselves more competent rather than police in solving the cases. But they forget that they are not a trained investigating agency and during the investigation these channels do not use preventive measures. Where the accused is not identified by the witnesses, he must be kept in “*parda*” till the identification “*parade*” is completed by the magistrate. But news channels do not take any precaution and produce the suspect without restraint on TV screen. These channels even interview the witnesses on screen and ask the questions about the crime. This act of media creates the problem for the witnesses because in consequent thereof, culprit gives threat to them and tries to destroy the evidence which is very useful for the fair trial.

❖ Evidentiary Value of Media Trial

Mere recording of FIR against someone is not enough to jump to the conclusion of his culpability without going through the substantive and circumstantial evidence. A person should not be punished for a crime unless there has been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, and excitement. The court's verdict must be based on evidence received in open court and not from outside sources.

This is fundamental that no person, accused of any offence, shall be compelled to be a witness against himself. Obviously, precautions are needed so that the disclosure of evidence by an accused must be voluntary, not under duress and is without any tampering, altering and editing. Article 20(3) of the **Indian Constitution** provides for the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of criminal jurisprudence. This article is a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversarial system into an inquisitorial scheme is the antagonistic, anti-chamber of police station.⁷ So, compulsion is not only a physical act but the state of mind of the person making the statement. Media, sometimes, compels a person accused to give statement by the way of misrepresentation, or promise to non-use his statement against him in the Court.

While conducting the programme, no investigative procedure is followed and the documents are not scrutinized. The discussions veered round imaginary and speculative ideas purveyed by the electronic and the print media. Where confession by accused made to the police, they are hit by the **Indian Evidence Act**.⁸ Thus, it makes confession to the police inadmissible in law because police tends to quibble to the public outcry and state's pressure and is ready to spill the beans even through extra-legal means like physical torture. “They are guilty or not” would be known only when the matter is fully investigated and tried in the court, though strong suspicion would remain at the inception. Even Polygraph

⁷ Nandani Satpathi v. P.L. Dani AIR 1978 SC 1025.

⁸ Section 25 of the **Indian Evidence Act**, 1872.

or Lie Detector, Norco—Analysis and Brain Mapping tests can give makes a person guilty even before he or she is tried in the Court.

In judicial proceeding of a criminal case, where an accused is not known previously by witnesses and identity of a person is in issue. The law, in this case, provides that identification Magistrate shall conduct an identification *parade*⁹ for this purpose. This may jeopardize the identification parade held by the Magistrate.

But in a judgment, the Apex Court expanded the horizon of admissibility of evidence and it has reinforced the view that media can play a constructive role. The court has added a new and significant chapter to the constructive criminal jurisprudence and given a role to media in criminal trials by holding that a TV interview can be trial “*evidence*”. The Supreme Court in appeal hold that it goes without saying that the relevance and admissibility of the statement, if any, given by the accused before the media persons shall be considered at the appropriate stage in the trial.¹⁰ The Delhi High Court while upholding the death sentence of **Sushil Sharma** in *Tandoor Murder* case acknowledged media’s role in raising the standard of investigation in criminal cases.

❖ **Conviction by the Media**

The **Indian Constitution** gives some fundamental protection to an accused from conviction against *ex post facto* laws¹¹ and double jeopardy.¹² But, media convicts a person through its trial (*wherein the accused has committed the crime or not*) and give him grave punishment in form of defamation and destroying his social life to live. Through media trial the accused is punished several times. “Caught on camera” incident has become more and more common. The person tried by media who afterwards acquitted by the courts, totally loses his career and reputation due to unnecessary media coverage. The purpose of the trial is to ascertain the truth. This is the function of the Court of law to try a case and decide it on the basis of evidence adduced by the parties to the case. Today, media encroaches the function of the Court and by presenting the criminal cases it starts its own trial of the case. Things are fine till the media sticks to do its work, *i.e.*, bringing issues to public attention but the things turn upside down when the reporters get over excited and go overboard and far beyond their own domain. During high publicity of court cases, the media is often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that regardless of the result of the trial, the accused will not be able to live the rest of his life without being hounded at every turn.

⁹. Section 9 of the Indian **Evidence Act**, 1872.

¹⁰.Sajid Beg Asif Beg Mirza v. State of Gujarat, judgment order dated 22nd January, 2007.

¹¹.Article 20(1) of the **Indian Constitution** provides that: “No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

¹².Article 20(1) of the **Indian Constitution** provides that: “No person shall be prosecuted and punished for the same offence more than once.”

In criminal cases, the presumption is that the accused is innocent till the contrary is established. It is often said that it is better that hundred guilty men should escape than that one innocent man should suffer. Greatest possible care should be taken in convicting the accused. If there is an element of reasonable doubt as to the guilt of the accused, the benefit of the doubt must go to him. A mere suspicion, however, strong cannot take the place of evidence.¹³ The disclosures, interviews and statements on electronic media as admissible in law, enjoin greater responsibility on the media. Definitive views on guilt can harm the reputation of the concerned person and give wrong notions to the common people. Only a very small percentage of criminal cases attract media attention. Media convict a person without any evidence. Before the *Arushi Murder* case, there was the case of the murdered teenager Scarlett in Goa which saw the media feasting on lurid speculation and before that there was the case of the Delhi School teacher accused of inducting girls into prostitution. It was a cooked up story. The schoolgirl was actually an ambitious reporter aspirant. But everybody went through the concocted story by which her reputation was severely tarnished and career destroyed. Mr. **Gillani**, who was an accused of Parliament attack in December, 2001 and was acquitted in 2005 by the Supreme Court, said that:

*“Media has played a highly dubious role in turning the people against me. I remember the first time, when I was paraded before the media on 16th December, 2001. Every channel and newspaper was there. It was like walking the ramp. I shouted, we are being framed but no one reported what I said. Instead, their banner headlines said a university professor had led the terrorist. Throughout the trial, the media ignored the defense and only reported the police version. A prominent Hindi TV news channel made a film portraying me as the master mind of not just Parliament attack but of the entire militancy in Kashmir.”*¹⁴

❖ **Right to Privacy**

Right to privacy¹⁵ is implicit in the *fundamental right to life and personal liberty* guaranteed under Article 21 of the **Indian Constitution** and no one can violate this right without procedure established by law. No one publish or project anything without the consent of the person concerned whether truthful or otherwise and whether laudatory or critical. If media do so, it would be violating the right to privacy of the person concerned and would be liable in an action for damages. A citizen, even an accused¹⁶ has a right to safeguards the privacy of his own and of his family. If media does so, it would be violating the right to privacy of the person concerned and would be liable for action for damages.¹⁷ But, it is very pathetic that the media, to which the common man looks for the real picture, has really come up with a confusing image and distorted facts and pictures. The media is interested only in TRPs or getting a

¹³. *Sarvan Singh v. State of Punjab* AIR 1957 SC 637.

¹⁴. “**The Target Forever**”, Tahalka, Vol. 5(46), (22nd November, 2008), at p. 26.

¹⁵. *People’s Union for Civil Liberties v. Union of India* AIR 1997 SC 568; *R. Rajagopal v. State of Tamil Nadu* (1994) 6 SCC 632.

¹⁶. *Kharak Singh v. State of Uttar Pradesh* AIR 1963 SC 1295.

¹⁷. *R. Rajagopal v. State of Tamil Nadu* (1994) 6 SCC 632.

“scoop”. The media now, has not a responsible “face”. Even, all TV channels have crossed the limits of beaming their interpretation in every living room of the nation and spoiling the family mood just for better TRP rating.

This is pity that still in India, a superpower of knowledge, rationality and wisdom, creating sensation is the business of many, that too who are called educated, civilized and responsible—the journalist fraternity. It is high time the media owns up and changes its paltry approach and become harbingers of truth to aid justice.

❖ Impact of Media Trial on Judicial Process

Media and Judiciary both are the oxygen of democracy.¹⁸ Media is not only an instrument of disseminating information but is also a powerful medium for moulding public opinion by projecting the accused guilty. So, it is the duty of media to present true and substantially correct fact and situation of a case. Sometime, media deviates from its duty and become bias in projecting the facts of the case. This gives the wrong impact on the public. “Pre-trial publicity” and “actual trial coverage” may prejudice the decision making process of the court in determining liability or guilt in the course of criminal proceedings. This is the duty of a judge, in a case, to decide the case without any prejudice. But judges are also human being and their mind cannot be like a blank paper. Being human, they are also influenced by media reporting. Once media discussing merits of the case during investigation stage, the judges are always under a subtle pressure to deliver the judgment which must in consonance with media reports. Because, whenever the court has delivered the judgment contrary to media it has always become the subject of public suspicion. In *Sajid Beg Asif Beg Mirza v. State of Gujrat*,¹⁹ the defense lawyer took the plea that trial judge was influenced by extensive media coverage. But the Court, dismissing the plea, said that:

“We have experienced that these days whenever media people highlight some crime, investigating agencies perform their functions with much more diligence and perfection.”

The Court further said:

“We find that media publicity is now becoming one of the main grounds of challenge whenever some conviction takes place. The media, however, cannot be blamed for highlighting the facts spoken before the camera by the representative of the prosecution or the accused.”²⁰

In this regard, the former Chief Justice of India **Y.K. Sabharwal** expressed his concern on the latest trend of the “trial by media” in criminal cases and “pronouncing the judgment” before the judgment. He said that:

¹⁸. Justice Sawant P.B., **Media and Judiciary**, Statesman, (28th March, 2005), at editorial page.

¹⁹. *Supra* note 10.

²⁰. Alvi Naziya, **Media Raising the Prove Bar**, Hindustan Times, New Delhi, (20th February, 2007), at p. 6.

*“If this continues, there cannot be any conviction; Judges are confused because the media has already given a verdict.”*²¹

So, in such crucial circumstances, courts should be ensured that it is free from any pressure to justify its decision. Thus, wide media coverage, generally makes a fair trial impossible and beyond imagination.

Judges presiding over the matter, by reading the various news paper reports on the crime, as engrossed in the coverage of the trial in the local news channels as common man, could get swayed over by the guilt tried against the accused. There is a definite possibility that otherwise inadmissible evidence would find a backdoor entry. For instance:

“Evidence of bad character is not relevant on the principle that every case ought to be decided on its own merit and evidence of general bad conduct might prejudice the merit of the particular case.”²² Media tends to highlight past character which may be insufficient to prove an accused guilty, but thrown into the balance of justice, it may cause a very uncomfortable tilt of scales.²³ Therefore, the Court must confine itself strictly to the provision of the **Indian Evidence Act**, 1872 and come to the conclusion regarding the relevancy of a fact on the interpretation of the relevant provision of the Act, regardless of the fact whether the conclusion arrived at is in accordance with common sense view of things or not.²⁴ It is the duty of the judge apart from objections by the opposite parties to exclude irrelevant evidence.”²⁵

In addition, discussing this issue, few suggestions could be proposed, which are follows:

- There should be at least a place of complaints like Press Council with time bound hearing procedures and prescribed penalties.
- Accuracy in reporting facts is the first responsibility of media so it should be adopted.
- Uncover the truth is not always the job of media because it is not equipped to investigate and uncover the truth in severely complicated cases, so where cases are so complicated not easy to solve. Media should not do this work.
- The approach of media is very simple and old one. Instances of use of informal means to influence the media through quit phone calls and unofficial approach are used. The responsibility of the media to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher standards. Media should be slow in this process and work only on proper evidence.

²¹. Ranran S., *Media on Trial*, Times of India, New Delhi, (26th January, 2007), at p. 16.

²². Section 54 of the **Indian Evidence Act**, 1872 provides that: “*Previous bad character not relevant except in reply—in criminal proceeding the fact that the accused person had a bad character is irrelevant, unless evidence has been given that he has a character in which case it become relevant.*” **Example 1:** This section does not apply to case in which the bad character of any person is itself a fact in issue. **Example 2:** A previous conviction is relevant as evidence of bad character.

²³. Singh A.P. and Mohan Madan, *supra* note 5, at p. 239.

²⁴. *B.N. Kashyap v. Emperor* AIR 1945 Lah 23–26.

²⁵. *Dwijesh Chandra Roy v. Naresh Chandra Gupta* AIR 1945 Cal 492–493.

- TV channels are supposed to be information agencies and not investigating ones. Police agencies should not allow TV crew to enter the crime scene where possible important fingerprints, evidences and clues are lying for the police to collect.
- Families and friends of persons accused and victims of crimes have apparently successfully used the power of the media to reopen cases, but media should avoid individual cases based on some approach factors.

In conclusion the **Indian Constitution** guarantees freedom of speech and expression to its citizens as enshrined in Article 19(1)(a). This freedom is subject to reasonable restrictions.²⁶ Media is also not immune from these restrictions. Journalists and media are not given a total free hand to publish or telecast anything they desire. Government can impose these restrictions on media too. Even then, in India, control mechanism is highly weak and sterile. Print and electronic media depends on the government for financial assistance, and news print and assistance. The 17th Law Commission has made recommendations to the centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial. The subject “**Trial by Media: Free Speech v. Fair Trial under Criminal Procedure—(Amendments to the Contempt of Court Act, 1971)**” was taken up *suo motu* by the Commission having regard to the extensive prejudicial coverage of crime and information about suspects and the accused, both in the print and electronic media. In its 200th Report submitted to the Government, the Commission said:

“Today there is a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice.”

Enclosing a Draft Bill, the Commission said that this report was important and crucial for the country as far as criminal justice was concerned. But, neither government nor lawmakers have done anything thereafter. In absence of proper control mechanism, intrusive media coverage may actually serve to encourage sensationalism trivialization. The media abuse the public interest and thus push to disregard the ethical code of conduct simply for commercial gain.

Freedom of expression enables citizen to seek the path to truth, to democracy and to self fulfillment.²⁷ Media should only publish that which is true. Media works to uncover the issues of public concern. In this way media undertakes the role of watchdog. Hence, they must do so in a responsible

²⁶. Article 19(2) of the **Indian Constitution** permits the state to put reasonable restrictions on the exercise of the freedom of speech and expression on the ground of,—(a) sovereignty and integrity of India, (b) security of State, (c) friendly relation with foreign states, (d) public order, (e) decency and morality, (f) contempt of the Court, (g) defamation, (h) incitement of the offence.

²⁷. Rajnish, *supra note 3*, at p. 120.

manner, maintaining the highest professional and ethical standards whilst working in the letter and spirit of law.²⁸

The boundary between freedom of media and right to fair trial of an accused is the “Laxman Rekha” and media should not cross the line of boundary. Media attention should be towards exposing corruption, nepotism, lawbreaking, abuse or arbitrary exercise of power, law and order, economy, health, science and technology, *etc.*, which are matters of public interest?²⁹ Media should not invade into the right of fair trial of accused and proceedings of courts. The right of media to furnish the information or facts or opinion should be only to foster public interest and not to encroach upon the individual’s rights.

²⁸. Ibid, at p. 121.

²⁹. R. Sukany v. R. Sridhar AIR 2008 Mad 249.