

“Trial By Media: An Indian Perspective For Judicial Process”

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I. Introduction

Media protects the democratic nature of a country being the eye of public through the times from pre-independence till date. The enumeration of the most discussed right to freedom has been done under Indian Constitution along with international governance for the same along with “reasonable restrictions” to be taken into consideration. The “Trial by Media” as a subject has been a part of many discussions on different platforms by different activists, academicians, lawyers etc. The range and impact of media has increased tremendously with time and has the highest effect with regard to each and every aspect or matter concerned, which raises a question of pre-trial and media verdict issues that jeopardize the right to free trial and unbiased trial in the court of law.

The Andhra Pradesh High Court in *Labour Liberation Front v. State of Andhra Pradesh* has observed that once an incident involving prominent person or institution takes place, the media swings into action, virtually leaving very little for the prosecution or the Courts. When the criminal case is in the court the media should not interfere in the course of justice and should wait till the process is complete. However today media is often found running parallel investigation and trail where media itself is accuser, investigator and adjudicator. Such undue interference in administration of justice have a serious implication on the accused as well as victims and witnesses of the case and may also lead to miscarriage of justice. Recently the events which occurred during Aarushi murder case are chilling example of how media can affect trail as well as investigation in criminal case. Aarushi murder case reminds us that unruly media can wreak havoc on the suspects as well as on victims of the case by tarnishing their image in full public glare.

With the case of Sheena Bohra murder, the excruciating eyes of the media have pierced the personal life of the main accused Indrani Mukherjea which has kicked in a fresh debate on the issue of media trial of the accused. Every aspect of her personal life and character which have nothing to do legally with the investigation of the murder are under public lens of scrutiny via the media. The ethics of journalism have been again in a controversial area due to their prying eyes on the accused.

The main role of media is to inform and educate the society. Media is the most potent organ of communication which can keep society well informed of violation of law. We all know how media exposures have made many powerful personalities bow before the law of the land. A responsible media has to follow the virtues of accuracy, honesty, truth, objectivity, fairness, balanced reporting and respect of ordinary people. However today we are noticing that in temptation of growth targets and TRP the print and electronic media is busy in selling sensationalism to public which is ultimately derailing the judicial process in India and unwantedly tarnishing the image of suspect even before the trail in court and thereby affecting his or her right to fair trial.

2. FACETS OF MEDIA TRIAL

2.1 Evils of Media Trail

Phenomenon of trail by media has reached to alarming proportions. In recent times there has been numerous example of the trail conducted by media. However such trails can affect the right of the accused in the court and it also has adverse effects on the administration justice. Justice L. Narasimha Reddy while anguishing upon the practice of media trail observed that:

The freedom of the prosecuting agency, and that of the Courts, to deal with the cases before them freely and objectively, is substantially eroded, on account of the overactive or proactive stances taken in the presentations made by the print and electronic media. Once an incident involving prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts to examine the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements, and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitment to the noble profession. The freedom of speech and expression which is the bed rock of journalism is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively.

Trail by media has often resulted into tarnishing of image of accused even before the verdict of the court. Entire private life of the accused or suspect is ripped off in public and many times media also pronounce the verdict on cases even before the proceedings in the court begin.

2.2 Right to Fair Trail Compromised

The Indian criminal justice system encompasses several rights to the accused which includes the right to be presumed innocent until proven guilty, also the guilt is to be proved beyond reasonable doubt, 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. Above rights are also enumerated in Article 14 of the International Covenant on Civil and Political Rights.

Right to fair trail includes right to be presumed innocent till proven guilty. In *Anukul Chandra Pradhan v UOI* the Supreme Court of India observed that no occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis or the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement undoubtedly has to be kept in view during the entire trial. In *M.P. Lohia v. State of West Bengal* a woman committed suicide in Calcutta in her parents' house but a case

was filed against the husband and in-laws under the Indian Penal Code for murder alleging that it was a case of dowry death. While matter was still pending two articles naming "Doomed by Dowry" were published in the magazine which narrated entire story in one sided manner. Articles portrayed the allegations made by women's parents only and did not took into consideration the contentions raised by the husband. The husband had filed a number of documents to prove that the woman was a schizophrenic psychotic patient. However court below refused to grant the bail. The Supreme Court while granted interim bail to the accused and while passing the final orders, referred very critically to certain news items in the Calcutta magazine. Supreme said that such trail will certainly interfere with the course of administration of justice.

Justice Felix Frankfurter of the US Supreme Court many Years earlier in *John D. Pennekamp v. State of Florida* had observed that:

"No Judge fit to be one is likely to be influenced consciously, except by what he sees or hears in Court and by what is judicially appropriate for his deliberations. However, Judges are also human and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process ... and since Judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print. The power to punish for contempt of court is a safeguard not for Judges as persons but for the functions which they exercise. It is a condition of that function – indispensable in a free society – that in a particular controversy pending before a court and awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertone of extraneous influence..."

However in *Nebraska Press Association v. Hugh Stuart* the majority held that trained judges and even jurors are not influenced by publication in the media.

The position in India is however not very clear. However Supreme Court in *Reliance Petrochemicals Ltd v. Proprietors of Indian Express* has quoted the Lord Dilhorne observation that judges and jurors may be influenced subconsciously. Supreme court In *Re P.C. Sen* has observed that "No distinction is, in our judgment, warranted that comment on a pending case or abuse of a party may amount to contempt when the case is triable with the aid of a

Jury and not when it is triable by a Judge or Judges.”

From the above passage it can be inferred that Supreme Court has stated that no distinction can be made on the ground whether a case is triable by a judge or jury. If an action tends to influence the jury, it may also tend to influence a judge.

There are some instances where media's excessive coverage of trial has created prejudicial impact in judicial pronouncements. The media played an excessive and negative role in shaping the public opinion before Afzal was even tried. The impact of media's coverage over entire issue was clearly visible in observations of Justice P. Venkatarama Reddi in upholding the imposition of the death penalty on Mohammed Afzal.

Justice p. Venkatarama observed that:

“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.”

However, the Supreme Court in Jessica Lal's murder case has held that:

“Certain articles and news items appearing in the newspapers immediately after the date of occurrence did cause certain confusion in the mind of the public as to the description and number of the actual assailants/suspects. It is unfortunate that trial by the media did, though to a very limited extent, affect the accused, but [was] not tantamount to a prejudice which should weigh with the court in taking any different view.”

The above brief study of the cases on the impact of prejudicial publicity on judges in different jurisdictions gives a mixed picture of law; in fact position in India itself is not clear whether judges get affected by the prejudicial publication of cases. However it is submitted that judges are not a super human personality, in what manner they are so influenced may not be visible from their judgement, but they may be influenced subconsciously.

2.3 Infringement of Privacy & Reputations Tarnished

Right to privacy is one of the fundamental rights which is conferred by the constitution to every individual under article 21 of the constitution. Article 12 of Universal Declaration of Human Right enunciates, “No one shall be subjected to

arbitrary interference with his privacy, family, home or correspondence or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.” Supreme Court in R. Rajagopal v. State of Tamil Nadu while dealing with the issue of right to privacy and freedom of press observed that:

“A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. No one can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.”

In State of Maharashtra v. R. J. Gandhi, the case was one of rape on a girl eight years old and the offence was committed at Kolhapur and the case was to be tried there. But because of public outcry, the plea of the accused for a fair trial was accepted and the case was transferred by the Supreme Court to the session's court at Satara. Confirming the conviction and advertent to the harm caused to the victim, the Supreme Court said “A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against such pressure and he is to be guided strictly by rule of law.”

The Madrid principles on the relationship between the media and judicial independence expressly allow for the preservation, by law of secrecy during investigation of crimes even when such investigation forms a part of judicial process. However today moment crime is committed media starts digging into personal life of the accused and victims which is clearly violation of privacy of the accused and victims of the crime.

Trial by media not only infringes the privacy of person but also leads to tarnishing to image of person in full public glare. The Aarushi murder case was perfect example of image assignation. During the hearing of the public interest litigation filed by advocate Surat Singh in the Aarushi Talwar murder case before the Supreme Court, Justices Altamas Kabir and Markandey Katju remarked:

“Nobody is trying to gag the media. They must play a responsible role. By investigation, the media must not do anything which will prejudice either the prosecution or the accused. Sometimes the entire focus is lost. A person is found guilty even before the trial takes place. See what happened in this [Aarushi] case. Till today what is the evidence against anyone? We will lay down guidelines on media coverage. We are not concerned about media criticizing us. Let media say anything about us, we are not perturbed. Our shoulders are broad enough and we will ignore it [the criticism]. We are for media freedom. What we are saying is there is no absolute freedom. See what happened to Dr. Talwar [Aarushi’s father], his reputation is tarnished.”

Supreme Court recently while hearing an application by Rajesh Talwar said that “this is sickening... to write about a child who was only 14 years old when she died. Her reputation is tarnished. We are for fair reporting. But this is sensationalism and simply character assassination. Can it be justified?”

3. LEGALITIES OF TRIAL BY MEDIA

3.1 Legality of Trial by Media

Trail by media is been growing concern these days. Trail by media is seriously affecting the basic rights of the accused and is also affecting criminal justice system. However, media in its justification has always said that it has always acted in public interest. Let’s go through various issues to understand the legality of media trails.

3.1.1 Freedom of press:

International Covenant on Civil and Political Rights, 1966, embodies the right to freedom of speech, that is, “everyone shall have the right to hold opinions without interference” and the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Indian constitution also guarantees freedom of speech and expression under article 19 (1) (a) of constitution. However, unlike United States of America the freedom of press is not separately granted under our constitution, but Supreme Court has construed freedom of press under umbrella of freedom of speech. It is article 19 (1) (a) which is always invoked by media whenever it is under fire from

judiciary for interfering in administration of justice.

In Re: Harijai Singh and Anr. & In Re: Vijay Kumar , the Supreme Court while deciding the scope of the freedom of press, recognized it as “an essential prerequisite of a democratic form of government” and regarded it as “the mother of all other liberties in a democratic society”. The right under Art 19(1) (a) includes the right to information and the right to disseminate through all types of media, whether print, electronic or audio-visual means. The right under 19 (1) (a) includes the right to acquire and impart ideas and information about matters of common interest.

3.1.2 Public’s Right to Know and Participation

The Supreme Court has expounded that fundamental principal behind the freedom of press is people’s right to know. The primary function of the press is to provide comprehensive and objective information of all aspects of the country’s political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion.

3.2 Freedom of Press & Contempt of Court Act, 1971

Power and reach of media in 21st century are tremendously increased and it has the power to mould the public opinion. However, this power of media should be used in best interest of public good. A free press is one of the important pillars of modern democracy and essential for health of democracy. It has been regarded as a necessity for the mental health and well-being of society and has been considered necessary for full development of personality of individuals in a democracy. Freedom of press is part of freedom of speech and expression which is envisaged by article 19(1) (a) of our constitution. At same time it is also necessary that this freedom must exercise with utmost care and responsibility and should not be abused and treated as a license to degrade other institutions of the democracy. It should be remembered that freedom of press is not absolute, unlimited and unfettered.

Section 3, 4, 5 and 7 of the contempt of court act 1971, tries to place certain restriction on the press in order to avoid any interference in administration of justice and to protect the judiciary from any

undue criticism. Section 4 provides for fair and truthful reporting of judicial proceeding or any stage thereof. Section 4 thus covers pending or concluded proceeding within its sweep. Section 3 makes provision in respect of innocent publication of any judicial proceeding which is pending. Whereas section 5 applies to publication of a fair comment on the merits of any case which has been heard and finally decided. The phrase “finally decided” appears to have been used in contrast to “pending proceeding” as contemplated in section 3. However, condition is that the reporting of the judicial proceeding or any stage thereof should be fair and accurate. Provision for publication or reporting of any judicial proceeding which is held in camera is made under section 7. Thus, fundamentally the provision of these sections significantly affects the fundamental right of freedom of speech and expression as guaranteed under article 19 of the constitution of India to every citizen.

Object of section 3 is to prevent unnecessary publication of matter which is sub-judice; as such publication can affect the trial in court and can interfere with the judicial process. Phillimore Committee has noted the dangers involved in allowing public debate in media in respect of any proceeding pending in the court. Committee has noted that:

“The danger of ‘trial by the press’ or ‘trial by television’ are too obvious to require amplification. They are real dangers and if the law were to permit publication of this character there would be serious risk that confidence in the impartial administration of justice would be severely impaired while the litigants concerned would readily lose confidence that they were in fact going to receive a fair trial - especially in case tried by jury. In addition there are always disappointed litigants who are prepared to ascribe their failure to prejudice or bias on the part of judge or jury or both, and if the ‘press trial’ and actual litigation led to the same result it would be only too easy for the losing party to ascribe his failure to improper influence exercised upon the tribunal. It would be unfortunate if the high reputation enjoyed by the courts of this country for impartiality and fairness in hearing and decision were lessened or undermined in this way”.

Delhi High Court in *Sushil Sharma v. State of Delhi* while dealing with the contention of medial trail has observed that comments on a case which is sub-judice or to suggest that the Court should take a certain course in respect of a matter before it, undoubtedly constitutes contempt, and honesty

of motive cannot remove it from this category. For, if this were to be allowed, persons in a position to assist the Court by their evidence might be prevented from coming forward and persons appearing as witnesses might be influenced in their testimony.

As already noted that section 3 only applies cases where matter is sub-judice or pending. The phrase used in section 3 is pending. According to the explanation appended to section 3 a judicial proceeding can be said to be pending in case of civil proceeding when it is instituted by filing of a plaint and in case of criminal proceeding case would be considered as a pending when charge sheet is filled in court or when summons or warrant is issued by the court or when court take cognizance of the matter. Generally most of the high court and Supreme Court in many cases have upheld the explanation appended to the section 3.

In UK according to Contempt of Court Act of 1981 the case is considered to be pending moment the arrest is made. Section 1 of the UK act of 1981 introduces the principle of strict liability which means that “the rule of law whereby the conduct may be treated as contempt of court as to interfere with the course of justice in particular proceeding regardless of intent to do so. Further section 2(3) says that the strict liability rule applies to publication only if the proceeding in question is active within the meaning of this section at time of publication. Section 2(4) of the act says that a proceeding would be said active if it is within schedule 1 of the act and schedule 1 of the act categorically mentions arrest without warrant as initial steps in proceedings. The critical decision which is the basis for the UK Act of 1981 is *Hall v. Associated Newspapers*. In that case, the Scotland Court referred to the test as to whether proceedings have reached the stage when it can be said “that the court has become seized of a duty of care towards individuals who have been brought into a relationship with the court”. Applying that test, it was held that contempt applied “from the moment of arrest or from the moment when a warrant for an arrest has been granted. With regards to arrest, it was felt that, the person arrested is within the protection of the court since he is vested with rights which he can invoke and which the court is under a duty to enforce.

In Australia also the position is pretty much same as to UK. The above judgment of Scotland court was followed by New South Wales (NSW) Court of Appeal in *A.G for NSW v. T.C.N.Channel Nine Pty Ltd* in which a film of an arrested man being led

around the scene of the crime by the police was shown on television with a commentary which clearly implied that he had confessed to a number of murders (which was indeed the case). At the time of the broadcast, the man had been arrested and charge had not yet been brought before the court. The N.S.W. Court concluded that the critical moment for contempt was the time of arrest from that moment:

“The process and procedures of the Criminal Justice system, with all the safeguards they carry with them, applied to him and for his benefit, and... Publications with a tendency to reduce those processes, procedures and safeguards to impotence are liable to attract punishment as being in contempt of court.”

While reaching to the above conclusion the Court of Appeal applied the principal of *R v. Parke* which stated that fountain of justice can be polluted at its source. The Australian Law Reforms Commission recommended that contempt should apply from the time when a warrant for arrest has been issued, a person has been arrested without warrant, or charges have been laid, whichever is the earliest.

In New Zealand Section 138(2) of New Zealand Criminal Justice Act, 1985 empowers the court to make orders precluding the press from reporting on criminal proceedings when it is considered that the interests of justice, public morality, the reputation of the victim of sexual offence or extortion or security of country require so. There many cases which refer the date of arrest as the starting point to consider the question of prejudice by publications. In *Attorney General v. Tonks* it was stated that it is incidental to the right to trial by jury that “a person accused of a crime is entitled to have the...cases presented to such a jury with their minds open and unprejudiced and untrammelled by anything which any newspaper, for the benefit of its readers ... takes upon itself to publish before any part of the case has been heard”. In *Tonks* case it was held that publication of photographs before trial of person who is arrested will be prejudicial if identification was likely to be an issue, and would amount to contempt. Blair J. observed:

“If a photograph of an accused person is broadcast in a newspaper immediately he is arrested, then such of the witnesses who have not then seen him, may quite unconsciously be led into the belief that the accused as photographed is the person they saw. The fact that a witness claiming to identify the accused person, has seen a photograph of him

before identifying him, gives the defence an excuse for questioning the soundness of the witness’s identification.”

In *Solicitor General v. Wellington Newspapers Ltd. Gisborne Herald* and two other newspaper publishers had been convicted of contempt for reporting the previous convictions of John Giles at the time of his arrest in Gisborne on charges of attempted murder of a police constable. Thus, from the above cases we can that in New Zealand the arrest is treated as sufficient to grant protection against publications. In Canada the Canadian law reform commission has stated that criminal proceeding can be said to be sub-judice at the moment the first information report is filed.

In 1963 the sanyal committee which was appointed to bring reforms in law of contempt was in favour of the date of arrest being the starting point for defining pendency of criminal case and used word imminent in the bill, still it made observation that publication made in one part of the country by media do not reach other part of the country, because our country is too vast. However today the position has changed, according to Hindu as on 2006, there are 203.6 million readers of daily newspapers and together with magazines, and it touches 222 million readers. Satellite television has 230 million viewers and television has reached 112 million Indian homes. The number of houses having cable and satellite television has gone up to 68 million. Internet use has reached 9.4 million and has touched 12.6 million in the last three months. Radio reaches 27% of the one billion population. Hence the observation of sanyal committee are of no relevance as today moment the arrest is made in any high profile case by police the media starts covering the story 24x7.

Also, according to Article 22(2) of the constitution as soon as the person is arrested he comes under the protection of the court. According to CRPC (Code of Criminal Procedure) once a person is arrested in a cognizable case by the police without warrant on the basis of ‘reasonable suspicion’ or by a warrant from the Court in the case of non-cognizable case where the Magistrate applies his mind as to whether arrest is necessary and under Sections 57 and 76 of the Code of Criminal Procedure, 1973, a person so arrested has to be brought before a Magistrate within 24 hours of the arrest. The above aspect is also essential under Article 22(2) of the constitution. And once arrest is made, the person arrested comes within the care

and protection of the Court and such a relationship with the court has been treated as sufficient in many countries to show that 'court proceedings' are 'imminent.

Thus, main function of section 3 is to prohibit any publication which tends to interfere or obstruct course of any judicial proceeding which is pending in court of law. However, the explanation appended to word pending is totally incorrect and outdated as today in age of 24x7 media the moment the arrest is made in any criminal case the media starts its own parallel investigation which can prejudice the entire matter and can also lead to tarnishing of image of accused. The Aarushi murder case is the best example of it.

Fair and reasonable criticism of judgment which is a public document would not constitute contempt. In fact such fair criticism is essential in a democracy as it would be even helpful to judges concerned to know their own shortcomings. In democracy the press and media has full right to criticize an opinion of a court, or question its conception of the facts, so long as such criticisms are made in good faith and are in decent and respectful manner which does not tend to bring any disrespect to the institution of courts in this country. However any unfair criticism of any proceeding in court or of any judgment delivered by court which brings disrespect of the institution of court or which raises doubt on integrity of judges should be treated as serious contempt of court as such publication can lead the considerable portion of the community to believe that it can no more rely on the institution of court. If people lose their faith in the justice delivered by the courts than entire democratic setup would crumble down. Lord Denning M.R. in this background has observed that:

"Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking - the Judge is biased. Majesty of Law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel the law of Courts will absorb anything and everything, including attacks on their honesty, integrity and impartiality. But it has to be borne in mind that such divinity and magnanimity is not its weakness but its strength. It generally ignores irresponsible statements which are anything but legitimate criticism. It is to be noted that what is permissible is legitimate criticism and not illegitimate insinuation. No Court can brook with equanimity something which may have tendency to interfere with the administration of justice. Some people find judiciary a soft target because it

has neither the power of the purse nor the sword, which other wings of democracy possess. It needs no reiteration that on judiciary millions pin their hopes, for protecting their life, liberty, property and the like. Judges do not have an easy job. They repeatedly do what rest of us (the people) seek to avoid, make decisions, said David Pannick in his book "Judges". Judges are mere mortals, but they are asked to perform a function which is truly divine."

Thus, any publication on judicial proceeding or on decided matter which intends to tarnish the image of the judiciary or judges should not be allowed to go unpunished in guise of fair criticism. In any unwarranted attack on judges the ultimate victim is the institution.

Supreme Court in Rama Dayal Markarha v. State of M.P. has observed that a fair criticism may fairly assert that the judgement is incorrect or an error has been committed both with regard to law or established facts. Criticising a judgement on the ground that a judgement on facts as disclosed is not in consonance with evidence or law has not been correctly applied would not attract contempt. Generally, in fair criticism the judgement itself will be subject matter of criticism and not the judge. However, to ascribe motive to a judge could not be considered as a fair criticism. Also, the criticism will cease to be fair once it is likely to interfere with due administration of justice or undermines the confidence which public repose in the court of law as court of justice. Criticisms which tend to distort the orders of the court and one which deliberately gives slant to its proceedings would amount to scandalizing of court and would cease to be a fair criticism as contemplated by section 5 and 4.

After going through above provisions, we can say that publication of any judicial proceeding or any stage thereof is not banned. On contrary section 4 and 5 of act specifically allows the same. However, under section 3 any publication which tends to interfere in course of any judicial proceeding which is pending in the court is banned. This does not mean that any report or comment by press made in respect of any pending judicial proceeding is considered contempt ipso facto. The comment and report published by press will be considered as contempt only if it tends to interfere or obstruct the course of justice or same tries to scandalize the court and judges of the court in such a manner that it will affect people's faith in justice imparted by the court.

However, the contempt of court act 1971 does not deal with the issue of postponing of publication to prevent prejudice to a suspect in an impending or pending criminal case. The punishment of a person who makes publication amounting to undue interference in course of justice under section 3 is not always sufficient nor does it in any way help the suspect or accused.

Law Commission of India in its 200th report on Media trail while suggesting the inclusion of provision postponement of order on lines of UK Act has suggested using words “**real risk of serious prejudice**” instead of using words “**substantial risk to prejudice**” so that the emphasis is not only on the word risk but also on the word prejudice.

5. Conclusion

Today the journalism as a profession has lost its inviolability and mantra is to feed the news which can be sold. Print and especially electronic media has gone into fierce competition and in pursuit of TRP the news are sold with a tinge of sensationalism. Media in the name of advancing an opinion has become investigator, court and court of appeal in itself. The moment the crime is reported the media starts jumping on conclusions as to who would have committed the crime and will also host various panel talk shows to decide the case before it even reaches to the court of law. Such pre-trial publicity is nothing but a trail by media which may prejudicially affect the suspect and accused person's right to a fair trial and also tend to affect the reputation of the person. Justice Katju and P. Sainath have attacked the media for focusing attention on “non-issues” and “trying to divert attention of the people from the real issues to non-issues” and “stifling of smaller voices”.

Trail by electronic media, press or public agitation is the very antithesis of the rule of law. Such extrajudicial trails can only lead to miscarriage of justice. Media has helped in solving many high-profile cases by mobilizing public opinion. The problem does not lie in media's exposing the lacunas in investigation by police, or non-performance of the duties ordained to the civil servants but the eye-brows start rising when the media crosses its legitimate jurisdiction and does what it is not supposed to do. The media opinion has now moved on to media verdict and media punishment which is no doubt an illicit use of

freedom of expression and transgression of the prudent demarcation of legal boundaries.

Media trail leads to a preconceived notion about the accused and that is how sometimes the accused gains unwarranted hatred or sympathy from the public in general. Before the judgment is even pronounced by the court of law or before the commencement of trial in the court the accused is either declared a criminal or innocent in the eyes of the public? The problem with media is that it is only interested in those cases which create controversies and which have the potential of creating sensationalism. Same thing happened in the Aarushi murder case as the murder of a 14-year girl is not rare in India however media dedicated many weeks after its coverage.

The most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct. The use of contempt powers against the media channels and newspapers by courts have been approved by the Supreme Court in a number of cases as has been pointed out earlier. The media has not been denied the freedom itself that needs to be exercised by them whenever it is required but when it is prejudicing the trial itself such freedoms shall be regulated or can be restricted in certain cases.

The print and electronic media along with the social media have gone into fierce and ruthless competition, as we call them ‘aggressive journalism’ that a multitude of cameras are flashed at the suspects or the accused and the police are not even allowed to take the suspects or accused from their transport vehicles into the courts or vice versa. Earlier, journalism was not under pressure to push up TRP ratings or sales. So, the journalists did their work with serious intent and conviction, with courage and integrity. They did not pronounce people guilty without making a serious attempt to study the charges, investigate them, and come to their own independent conclusions, without fear or favour. They did not blindly print what law enforcers claimed, what the bureaucracy said or what politicians planted on to them. That is why people trusted them. But now we are seeing a different self-acquired role of media in the form of ‘media trial’.

Freedom of press is very essential for the health of democracy however media should understand that

this freedom is not unrestricted. Court of Appeal in New Zealand has taken the view that:

“In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all other things being equal, the latter should prevail.”

Court while granting restraining orders further observed that “in pre-trial publicity situations, the loss of freedom involved is not absolute. It is merely a delay. The loss is an immediacy; that is precious to any journalist, but is as nothing compared to the need for fair trial.”

Courts in India have also taken similar view. In Rao Harnarain v. Gumori Ram the Punjab High Court had observed that:

“Liberty of the press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases.”

In Bijoyananda v. Bala Kush Orissa High Court observed that the responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of the press should not degenerate into a licence to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons.

It is submitted that in order to curb the menace of media trail there is need of regulatory body which can govern the actions of media. Press council of India was established for purpose of regulating media and press in India, however over the years it has proved to be toothless tiger. It is submitted that gagging media upto some extent by government regulations would be considered to be unhealthy for democracy, however the implications of continued unaccountability are even more damaging. Urgent steps are needed to be taken in order to prevent media trials from eroding the civil rights of citizens.

One other hand there is also need to amend the contempt of court act 1971 in order to confer wider powers in hands of judiciary to curb the unruly media. Law commission in its 200th report on media trail has emphasized on changing the definition of term “pending” in section 3, in order to control ill effects of pre-trial publicity which we saw in Aarushi Murder case. There is also need of provisions on postponement of publication which are prevailing in UK in order to stop the publication which may prejudice the trail in court.

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