

## **Trial by Media: Whether Outreach or Overreach?**

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### **Abstract**

A trial before a court of law, as against any other trial, has been devised and expected to make sure a legitimate, reasonable, judicious and balanced process to arrive at truth of any subject of dispute. Ultimate purpose of such trial is to know the real cause of a dispute and then, permanently and acceptably settle such disputes to the satisfaction of all stakeholders. A fair trial releases tension. Yet, trial before a court is not all flawless as is evident from the manner in which judgements of lower courts are being overturned by the superior courts. Stunning instances are there where same accused got life term by one court and acquittal by others.<sup>1</sup>

Perspective of a presiding judge on a set of facts under consideration largely governs the outcome of a trial. Perspective, in turn, flows from personality. That's why, we receive sometimes as many diverse judgements as the number of judges considering such set of facts. Subjectivity seems hard to be kept at bay. Needless to say, a faulty investigation or wrong interpretations can play havoc with justice. Such deviations from the correctness may be caused either by mistakes in good faith or looseness of integrity.

To keep one upright and responsive towards one's duty, a system of accountability assumes significance. Agreed widely, accountability is the best remedy to enforce objectivity. Accountability can be towards some in-house mechanism or towards the people in general. In a democracy people are supreme and their viewpoints have to be respected. They are real stakeholders and unless a system wins their confidence it runs the risk of being termed irrelevant. For a robust health of the democracy, it is essential that its citizenry remains updated and educated on important issues of polity, economy, law and society. Else, any accountability towards ill informed populace can be as dangerous as towards a lynch mob. If so, immunity is preferable for rule of law.

In this context, media throws sunlight on the darker sides of a case and ensures transparency. So, in an unconventional way, it plays a self assumed role of keeping the judicial functionaries accountable to the "we the people" of the preamble of the Constitution.

But, it is equally true that the cases in which media has run amok for its vested business interests instead of discharging its responsibility to the society, it has invariably caused injury to the justice in its own style. So, any overreach, laced with vice of gross commercialism, by the media to the processes of the court simply compounds a dispute and does disservice to the society and the nation. However, in the cases where it investigates any matter deeply and brings out missing facts to the public domain then its outreach serves the democracy through establishment of trust and justice. Here, media certainly works as a harbinger of hope. But in this mission of outreach media must remain alive to detriments of overreach.

**Keywords:** trial by media, trial by ordeal, prejudice, subjudice, freedom of speech and expression, people's right to be informed, jurisprudence, human rights, fair trial, interference in administration of justice, contempt of court, outreach, overlap, overreach, investigative journalism, yellow journalism, TRPs, judicial and journalistic ethics.

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## **INTRODUCTION**

Every justice delivery system has been created to ensure that people live a peaceful life of faithful acceptance of laws. Wheresoever justice has been perceived to be derailed, an uproar of protests has erupted mostly. People take it an injury on their conscience when they see that justice has failed in a particular case. And in bringing such failure of justice to the notice of people, media plays a great role. For this purpose, it engages in investigative journalism, opinion building and educating the masses.

In numerous instances, media has taken pains in highlighting those errors of courts which have resulted into miscarriages of justice. Consequent upon a cognizance by media, the regular courts, too, have been seen to be taking fresh cognizance of such cases. Thus, media plays a correctional catalyst's role.

At the same time, it must not be forgotten that there are countless other high profile cases where media has blown them out of proportion by adding unwarranted elements of sensationalism to meet its selfish interests of raising its TRPs in an age of fierce competition where a media house is compelled to steal a march over its competitor for survival purposes. When media indulges in such motivated acts impelled by vested interests of ruthless business then it doubtlessly tramples upon the legal and human rights of persons facing trial before a court.

Despite all institutional immunity to judiciary, judges too have been found influenced by a trial by media. To protect their reputation they prefer to play safe and swim along the stream. In an age where media enjoys practically unrestrained freedom, no judge dares to attract adverse attention of media's analysis of his judgments. Evidently, media has power to make or mar reputation of anyone. Demolishing a reputation is far too easier than rebuilding the same. Reputation is a fundamental instrument of social order, based upon distributed, spontaneous social control. Judges too are conscious of their reputation.

Again, caring for one's reputation is also a double edged sword. Too much care about it makes one timid. And carelessness about it makes one unresponsive to the social values. Therefore, a balanced approach towards reputation can be achieved and maintained by only persons of high integrity. And integrity as well as professional ethics can be inculcated through good social morals and sincere and honest education.

Had the trial by a court been completely upright and trustworthy, then the need of trial by media would have been obviated. But, to fill these gaps where a process of a court has been found wanting an external system of trial by media has stepped in, because people not only want to get justice but they want justice to be seen to be delivered.

## **Objective of the Research Work**

To examine as to why trial by media has come into being when there are provisions for trial by a court. Whether democratic right to get informed be given precedence over the right to fair trial of an accused. Whether media trial of a case necessarily does justice to a case. Whether rule of law is disturbed due to trial by media.

Hence, the present paper attempts to examine the need for searching for limits of encroachment of jurisdiction through a system of checks maintained by accountability, professional ethics whether that of judiciary or media.

### **Research Methodology**

The research methodology adopted for the present study is doctrinal in nature. Sources of information are essentially secondary. The researcher has placed heavy reliance upon library sources, reports, journals, web journals, articles from newspapers and magazines and legal databases. Methods of analysis are critical and comparative.

### **Trial by Court**

Justice is closely intertwined with truth, equity and conscience. There are many institutions which are engaged in justice delivery in their own methods. All these have been created by human beings to serve human beings and their ecology. Amongst these, surest, purest and final method of justice delivery has been considered and believed to reside in the elaborate process of a court. A judge is a top assessor having responsibility to shift loads of evidences collected through an established procedure. Whole enterprise of a judge has a supreme object of arriving at the truth. Why truth? Because truth convinces the conscience of the society and a peaceful existence is possible only when the members of society believe that the system of justice delivery is so efficient that for every action, a due reaction would come out. In other words, if some offence is committed, then punishment will necessarily follow. Trial before a court is so elaborate that all ingredients of fairness, justice, human rights, transparency and due opportunity have been provided for. Here, **stringency of punishment corresponds with stringency of procedure**. As perfection is very hard to achieve, so some deficiencies in justice delivery necessarily return to haunt us giving rise to comments and criticism by other institutions, notably press and electronic media. This all happens in spite of contempt powers of court.

### **Trial by Media**

With the growth of Cable Television and Channels, Local Radios, News Papers and Magazines, Networks and Internet the range and reach of media has increased a lot. In recent time there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. This phenomenon is popularly called as media trial.

No court procedure can be thought to be effective unless the persons availing such procedure are educated and aware. Before using an instrument or process one must know how to operate such instrument. Our educational institutions are doing a yeoman's service in creating a capable citizenry. Citizens are getting increasingly right-conscious and legally educated. But despite all this arrangement, it is also a fact that educational institutions are producing specialized knowledge. Here comes the need of media which provides us all sorts of information which is highly relevant to us, being current and useful. Media is a strong agent of shaping and influencing public opinion. It propels transparency direly needed to maintain trust of people in system.

Accordingly, media is regarded as an effective and indispensable institution for survival of democracy. It is capable of changing the whole perspective through which people

perceive different events. In many cases, where the justice before the regular courts has gone awry, it has played a commendable role in helping to bring the accused to book.

Some famous criminal cases where accused would have gone unpunished were highlighted and discussed by media are Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case, Bilal Joshi rape case, Nirbhaya case, DGP Rathore case etc.

Freedom of media to report on a case flows from freedom of speech and expression as contained in article 19 of the constitution. Though this freedom is bound by the sub clause (ii) of the same article, yet, for all practical purposes, media's freedom is nearly absolute. Certainly, only a powerful media can be expected to stand against injustices.

But, media has, of late, reincarnated itself into a public court and it has started interfering in court proceedings. In some cases, it has overlooked the vital gap between an accused and a convict thereby breaking the principles of "Presumption of innocence until proven guilty" and "Guilt beyond reasonable doubt".

With such pitfalls being inbuilt in media discussions, the Supreme Court tried to discourage the tendency of media trial and remarked:

"No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of the investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution."<sup>2</sup>

### **Journalistic Investigation and Interpretation**

Media, in pursuit of reaching to truth conducts its own investigation. Though in strict legal sense, such investigative journalism is against tenets of law and procedure. So, evidence collected disregarding the established procedure cannot be admissible before a court of law. But, media takes its evidence before the **court of public**. It moulds, influences, and creates opinions. And public revolts against any perceived injustice. Accordingly, a regular court is compelled to take fresh cognizance of a case.

Legally speaking, media prejudices the sub-judice. Excessive publicity in media about a suspect or accused jeopardizes his rights of fair trial. As such publicity results in branding him as a person who had indeed committed the crime. In this way, media causes undue interference with the administration of justice. Though, there is a law which calls "Trial by Media" as contempt of Court, but such law is very sparingly invoked keeping in view the sentiments of people in the democracy. People have democratic right to be informed and an accused has right to a fair trial.

### **An Overlap used as pretext for Outreach resulting into actual Overreach**

If the two institutions limit themselves to their individual duties then there is no problem. If a court does justice and also seen to be doing justice and the media simply reports the facts to the general public and society without putting its own spins then no issue is made. But fault lines start developing when either of these two institutions starts deviating from their individual duties. Both courts as well as media are supposed to be going after true facts of a case. Court's function is confined to a particular accused and if

it deals with the case before it in a judicious manner then outcome of such a case works as an example to the public at large. When true justice is produced our collective conscience gets satisfied. And media is an institution which can give wide publicity about such outcome of a case to the concerned and anxious society.

As media is also in the job of digging out information much like investigators, so its domain of functioning somehow and somewhere overlaps with a regular investigation by the state. Not only this, media interprets its own information in its own way. Here, its attempt at interpretations overlaps with the domain of courts. There is no clear-cut demarcation of domain between media and courts. There is a grey area where overlap of duties, whether perceived or real, exists. Both institutions claim to spearhead the cause of truth and justice. While media claims to do so through fair reporting and transparency, the courts do so through a system of fair trial. Just when courts follow a set procedure for this purpose, media is free to choose its means and methods.

As media is very potent in reaching out to the people who are supreme and real power in a democracy, so normally, it has been seen that an **unbound media** has an upper hand in dealing with a case if we compare media with **courts bound** by a set procedure and law. A Judge cannot come out of his court room and discuss a case in the public, whereas media always has open access to public. In this way, media has unrestrained freedom and accordingly, in a conflict of issues, a court can land in a precarious and disadvantageous situation. To take care of this imbalance, courts have been armed with the powers of contempt of courts proceedings to be used against anyone who interferes in the administration of justice. But in a case where media has already succeeded in building public opinion about a case before such case reaches courts then courts too show reluctance in initiating contempt proceedings as these are perceived by an opinionated public as an abuse of power by court just to muzzle a dutiful press. **Verdicts of trial media weigh on the minds of the judge presiding over a trial by court.**

### **Journalistic Ethics**

Here, only appropriate journalistic conducts and ethics can save the situation. If a case is reported truthfully and accurately by having regard to the principles of jurisprudence then media simply serves the society. But when it resorts to yellow journalism and sensationalism to raise its TRP and circulation then it simply does damage to the society. Unfortunately rules designed to regulate journalistic conducts are inadequate to prevent the encroachment of civil rights.

Journalism, a service oriented profession, entails great responsibility. Journalists are vigilant watchdogs of civil liberties, and are required to make critical scrutiny and careful questioning of various aspects of our daily life, in order to generate healthy public debates that would help augmenting the way we perceive existence in society today.

### **Judicial Ethics**

Likewise, judicial ethics and conducts of judicial officers should also be above board. If a judicial officer “tips the scales of justice its rippling effect would be disastrous and deleterious. A dishonest judicial personage is an oxymoron.”<sup>3</sup>

According to Transparency International, judicial corruption in India is attributable to factors such as "delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws".<sup>4</sup>

"Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside."

In Tarak Singh's case<sup>5</sup>, having regard to the plain truth that the judiciary is also manned by human beings and yet in view of their privileged position, apex court cautioned as follows:

"There is nothing wrong in a Judge having an ambition to achieve something, but if the ambition to achieve is likely to cause a compromise with his divine judicial duty, better not to pursue it. Because if a Judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be a tendency to make a compromise between his divine duty and his personal interest. There will be a conflict between interest and duty"

Underlining the importance of maintenance of discipline, the Apex Court has also observed as follows:

"Maintenance of discipline in the judicial service is a paramount matter. Acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer. The confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer."<sup>6</sup>

### **Influence of media tilting Scales of Justice**

Even judges have admitted that they are swayed and constrained by media reporting of a case. So media trial of a case cannot be brushed aside as an exercise in simply informing the public. Media trial after a limit certainly interferes with the administration of justice. This interference can be positive as well as negative depending upon the observance of the journalistic ethics by media.

Even in United States the judiciary has been of the view that the court cannot function properly if a reporting is calculated to disturb the judicial mind. In John D. Pennekamp vs. State of Florida, it was observed:

"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."<sup>7</sup>

Some high profile cases where media intervention proved beneficial to victim and society by ensuring justice:

1. **Jessica Lal murder case:** after acquittal of the accused by trial court, on 9 September 2006, a sting operation by the news magazine Tehelka was shown on the TV channel STAR News. This appeared to show that witnesses had been bribed and coerced into retracting their initial testimony. Accused's

father Venod Sharma, a congress leader, was named in the exposé as one who had paid money to some of the witnesses. Then Delhi Police filed appeal in Delhi HC which convicted the accused.<sup>8</sup>

2. **Priyadarshini Mattoo case:** acquittal of accused was reversed under intense media coverages.<sup>9</sup>
3. **Delhi Gangrape (Nirbhaya) case :** Media played its part effectively in awakening the nation and uniting it for a common cause. The most recent example of this is the Delhi gang rape case which the media took up and saw one of the biggest people's movements of recent times against the government demanding an effective action.<sup>10</sup>
4. **Tandoor (Naina Sahni) case**<sup>11</sup>
5. **2G Spectrum case**<sup>12</sup>
6. **CWG scam case**<sup>13</sup>
7. **Coal Block Allotment scam case**<sup>14</sup>

Cases, where media intervention botched up facts:

1. Aarushi Talwar murder case: Arushi Talwar murder case is a good example of meandering. Media took this high profile case and pronounced their verdict convicting the parents of the deceased even before the court of law could reach any conclusion. Even though the CBI has confirmed that Rajesh Talwar is not the killer media already had done its part and maligned his image in public.<sup>15</sup>
2. Nisha Sharma case<sup>16</sup>
3. Swatanter Kumar vs The Indian Express Ltd. & Ors<sup>17</sup>

From above, it can be concluded that both institutions of media as well as judiciary have faltered time and again giving opportunity to one against the other in educating the public about such faults. Therefore, there is a need to establish a system whereby media has reasonable access to material and it uses such material responsibly with sufficient legal safeguards to prevent misuse.

A balance between what may be published and what may not be published is required. In the name of democratic freedom, media cannot be allowed to twist rule of law and vitiate right to a fair trial by giving it access to a material publication of which can impinge upon the delivery of justice.

Likewise courts too cannot take shelter of secrecy and become unresponsive to the merit of justice for a healthy society. As Jeremy Bentham puts it:

“In the darkness of secrecy, sinister interests and evil in every shape, have full swing. Only in proportion as publicity has place, can any of the checks applicable to the judicial injustice, operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial.”<sup>18</sup>

In Indian Express (News Paper) v/s Union of India, the Hon'ble Supreme Court ruled that in today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of

society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Recently, a constitutional bench of Supreme Court of India did not find it proper to frame guidelines for media trial. It just propounded a **doctrine of postponement** where a court can just stop a reporting of a case for the time being on a need to need basis. Universal guidelines were found to be impossible to be framed in a democratic state.

Highlights of the case<sup>19</sup> are:

- \* Supreme Court says it can't frame guidelines on media reporting across the board.
- \* SC says temporary postponement on reporting a matter can be sought by aggrieved party by moving appropriate court.
- \* Journalists should know the 'Lakshman Rekha' so that they don't cross the line of contempt, SC says.
- \* Freedom of speech and expression is not an absolute right under our Constitution, says the apex court.
- \* SC says doctrine of postponement of reporting has been evolved as a preventive measure and not as a prohibitive and punitive measure.
- \* SC says doctrine of postponement of reporting has been evolved as a preventive measure and not as a prohibitive and punitive measure.
- \* The reasonable restriction on publication of court proceedings is for societal interest.

### **Conclusion**

Media, referred to by many as the “eyes and ears of the general public” forms the backbone of our society. And a responsible media is expected to take into consideration the reliance placed on it by the general public which blindly accepts the truth of the news published by media. It calls for having in place a responsible media. A responsible media must observe the following norms:

- A. Utmost accuracy of the case shall be maintained and verified before the same is reported.
- B. Every caution shall be exercised to shun opinionated reporting.
- C. Right to privacy shall not be interfered with.
- D. Faithful and truthful reporting of court proceedings is all the more important.
- E. Suspicion should not be a ground to pass verdict on one's culpability.
- F. Sensationalism has no place in responsible reporting.
- G. In case of a bona fide misreporting, rectification should be published without any delay to repair damage.

Be that as it may, the media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. Trial is very much effected by the Media sensation. Judges while making decision start considering Media criticism if they go opposite from the view of the Media. That's why, in most of the high profile cases verdict passed by media becomes the final verdict of trial courts. Judiciary should protect its turf and should not permit the outsourcing of trial to media unbound with a legal procedure created for fairness. Judiciary follows dictum of 'means must determine ends'. And media follows the dictum of 'ends must determine means'.

Fair trial is possible only before the courts enjoying the confidence of people, which in turn is reached when high standards of judicial ethics are maintained.

Attempt at outreach of media to the truth suffers real chances of turning into overreach of itself and undermining rule of law. Media needs to regulate itself and behave responsibly without encroaching upon others' jurisdictions.

### References

1. <http://www.thehindu.com/todays-paper/r-k-sharma-acquitted-in-shivani-murder-case/article2533038.ece>
2. (1961) 3 SCR 460
3. High Court of Judicature at Bombay vs. Shashikant S. Patil, (2000) 1 SCC 416
4. [http://www.transparencyindia.org/resource/survey\\_study/India%20Corruption%20Study%202005.pdf](http://www.transparencyindia.org/resource/survey_study/India%20Corruption%20Study%202005.pdf)
5. Tarak Singh vs. Jyoti Basu, (2005)1 SCC 201
6. High Court of Judicature at Bombay vs. Uday Singh, (1997) 5 SCC 129
7. (1946) 328 US 331
8. [http://en.wikipedia.org/wiki/Murder\\_of\\_Jessica\\_Lal](http://en.wikipedia.org/wiki/Murder_of_Jessica_Lal)
9. [http://en.wikipedia.org/wiki/Priyadarshini\\_Mattoo](http://en.wikipedia.org/wiki/Priyadarshini_Mattoo)
10. [http://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape](http://en.wikipedia.org/wiki/2012_Delhi_gang_rape)
11. [http://en.wikipedia.org/wiki/Naina\\_Sahni](http://en.wikipedia.org/wiki/Naina_Sahni)
12. [http://en.wikipedia.org/wiki/2G\\_spectrum\\_scam](http://en.wikipedia.org/wiki/2G_spectrum_scam)
13. [http://en.wikipedia.org/wiki/Concerns\\_and\\_controversies\\_over\\_the\\_2010\\_Commonwealth\\_Games](http://en.wikipedia.org/wiki/Concerns_and_controversies_over_the_2010_Commonwealth_Games)
14. [http://en.wikipedia.org/wiki/Indian\\_coal\\_allocation\\_scam](http://en.wikipedia.org/wiki/Indian_coal_allocation_scam)
15. <http://www.tehelka.com/framed-the-aarushi-hemraj-murder-case-an-investigation/?singlepage=1>
16. <http://indiatoday.intoday.in/story/nisha-sharma-dowry-case-noida-court-acquits-all-accused/1/176012.html>
17. <http://www.indiankanoon.org/doc/180037999/>
18. 'Constitutional Code, Book II, ch. XII, sect. XIV.' The Works of Jeremy Bentham, published under the superintendence of ... John Bowring, 11 vols., (Edinburgh: Tait, 1843) vol. ix, p. 493.
19. <http://www.legallyindia.com/201209113102/Bar-Bench-Litigation/breaking-media-trial-debate-sc-allows-temporary-court-reporting-gag-to-prevent-contempt-shies-away-from-regulation>