

## **Media Glare or Media Trial**

### **Ethical Dilemma between two Estates of India Democracy**

**Anamika Ray, Gauhati University, India**

**Ankuran Dutta, K KHandiqui State Open University, India**

#### **Abstract**

Media intervention in under trial cases has become very normal affairs in the society. Judges are compelled somehow to take decision according to the follow up of Media criticism. For which, declaration of verdict by media becomes the final verdict in trial courts especially in many high profile cases. Reincarnated as public court, media separately starts investigation and forms public opinion. It is obvious that to run the democracy very smoothly, a free and healthy media functionary is needed. But most of the time the freedom of expression is engrossed the controversy by the sub clause (2), article 19 of the Constitution of India. It does not embrace the freedom to contempt of court. But according to the demand of current situation, media significantly involves when justice is totally denied or delayed. Though media helps in social, political changes but sometimes it is also seen frequently that media involves into the money making business. Running behind the circulation and TVT, media makes rather covers the news. The journey from ‘mission to profession to creation’ or in other word ‘passion to fashion’ endorses the selling of human values. This paper is a humble effort to analyze the need of media involvement and playing a crucial role in establishing the justice in the society.

**Key words:** Indian Media, Public Court, Indian Judiciary, Media Ethics, Media Trial, Media Glare

There is a big debate on the involvement of media in any under trial case especially in developing countries. The comment of William Pfeifer gives a new direction to think-‘the rapid growth of social media and online networking has had a significant impact in the courtroom, particularly concerning jurors. Some jurors have triggered mistrials and new trials as a result of inappropriate social media activity during trials. A few jurors have even faced charges of contempt of court for their posts and activities on Facebook or Twitter during trials’ (Pfeifer, n.d.). In the developed countries the thinking into a new dimension has been started which is far cry in the developing countries, especially in India.

Media intrusion is an ethical dilemma for the developing nations of the globe. It has grown up to be a trend that media come forward to investigate the truth. ‘Trial by media’ is a phrase popular in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law ("Trial by media - Wikipedia, the free encyclopedia", n.d.). As the judiciary system has the key responsibility in the society, there have been established various courts at all levels to get the justice properly in stipulated time. Legal system exists for litigants. Nonetheless, practically it is now hardly seen. It has become the coin in the hands of lawyers, judges and of course authoritative and influential persons. Not only people wait to obtain justice for years, but also they sometimes become bound for obligation to buy the justice. The agony of the litigants is almost not felt by anyone. ‘Justice delayed is justice denied’ (Dutta & Ray, 2012).

In the developing countries, media trial is getting prominent day by day. It has seen that though the political parties are not much favour of the media trial, but due to the extreme pendency problem and decreasing trend of faith on the judicial system, public supports the trend of trial by media. In a recent news, Pakistan Peoples Party (PPP) leader Rehman Malik says in reference to the Muttahida Qaumi Movement (MQM), that the ‘media trial’ should not be conducted. Talking to media persons recently, Mr. Malik said that the image of any leader should not be affected by ‘media trial’ ("Rehman Malik Rejects Altaf Hussain's 'Media Trial'", 2014). Muttahida Qaumi Movement (MQM) Coordination Committee has said that the party and its chief are being subjected to a media trial ("Media trial being orchestrated against MQM, says Coordination Committee | Pakistan | Dunya News", 2014). Bangladesh also gets involved in the discussion carried out on the role of media in the cases on trial in the

respective courts. Criticising the role of media in the war crime trial, Rahman(2012) says, ‘the Bangladesh media has demonstrated a complete lack of moral standards ever since the International Crimes Tribunal was originally formed. Newspapers such as the *Daily Star* and *Prothom Alo* are ever ready to propagate the government’s version of history.... Unless and until the media rises to the challenge of questioning authority, investigating the truth and documenting it honestly, the citizens of Bangladesh will be failed by this mockery of a trial. ’

### **Case Studies in India and the Debate**

Almost eleven years back, it was an old father whose appeal for justice for his murdered daughter was answered. It was the turn of a sister to feel vindicated. A mother’s tear got justice at last. She was a 34 years old model had been hired to work as a celebrity bartender at the Tamarind Court restaurant in Mehrauli. A 24 years old boy asked for a drink from her at around 2 o’clock at night and offered 1000 rupees. But she refused. Then and there the sound of two firing was heard, and one of them hit her and she died. She is none other than Jassica Lal. Identified as the culprit by several witnesses, Manu Sharma was able to hide and to dispose of the attack weapon. He had very influential background, for which near about three hundred attenders of the party tried to escape taking the responsibility of the witness. The three key witnesses were either bribed or threatened. As the charge sheet was submitted by August 3, 1999 and in February 2006, all accused were acquitted due to lack of proper evidence. The whole duration of the trial revealed the loopholes of the Indian legal system. It showed that the high-class opponent could get rid off from any kind of crime.

So, in case of Jussica justice was not delivered, it was denied. That was the time when the media and public come forward together and compelled the prosecution to appeal in Delhi High Court to fast track the proceedings. Thousands of emails and SMSs on the petition were forwarded by the media to the President of India for seeking justice (Alvarez, 2011). Eminent lawyer Ram Jethmalani’s decision to defend Manu Sharma became an object of public derision. CNN IBN termed as “defend the indefensible”. He had been specifically targeted and maligned before and during the proceedings by the fourth estate very crucially. Jethmalani was declared as accountable even after the acquittal by the trial court (Bhankatesen, 2010). Rejecting this argument, the Bench said, “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” (George, 2010).

The breakdown of the Indian judicial system was termed as ‘miscarriage of justice’ by the media. In front of the India Gate, in support of demanding justice, a candle vigil was organized by media. *Tehlka* went for a sting operation, which exposed that the witnesses were bribed and the story was broadcast by *Star News*. Public pressure built up with newspapers splashing headlines such as "No one killed Jessica". At that time the *Hindustan Times* went for a poll, which exposed the common people faith in the judiciary by measuring it as near about 2.7 (on a scale from 1 to 10). Intense media and public pressure results the guilty life sentence. The justice was finally delivered delayed but not denied (Nandi, 2011). This is the case where it clearly proves the corruption of the Indian judiciary system as well as the influence of money and power. Without media’s intervention, it would have not been possible to get justice for a common man.

There is another incident. Santosh entered in the house in the VasantKunj area of New Delhi with the help of a domestic servant. After that, he raped her strangling with an electric wire. At last, he thrashed her head with a helmet. It was January 23, 1996, a black day for Matto’s family. He was arrested based on witness, testimonies, DNA report, the finger print sample, helmet along with other relevant evidences. Santosh Singh was the son of then Joint Commissioner of Police in Delhi. Charging that he was stalking Priyadarshini, a complaint was lodged two years back. It did not even give more fruitful result. Though there was enough reason to nail him. Additional Sessions Judge acquitted him by giving the benefit of doubt. It was clearly understood that the evidences were fabricated; the background of acquittal works a lot (Nandi, 2011).

In this case, also the spark of massive public protest and media intervention could be found. Media was publishing and broadcasting Chamman Lal Matoo (father) interviews seeking for justice. In the course of few years, Santosh got married, become father. Gradually he started his career as a lawyer in Delhi. But the media did not give up digging the truth. Investigation by media exposed numerous lapses in the murder case and case was compelled to reopen. Virendra Prasad, the domestic servant with whose help Santosh entered in the house, was

missing, and that was the reason to weak the case. However, after reopening the case, the journalists traced him from a village in Bihar. Public became frustrated demanding answers of the loopholes in the law. Public anger through the media has been able to pressurize the judiciary system for justice. Awaited to intense media coverage on February 29, 2000, CBI submitted an appeal against the verdict of the District Court in the Delhi High Court. Media's scrutiny fast tracks the case on a daily basis. Due to media's intervention with the help of a speedy trial by 42 days (on October 17, 2006) Santosh was awarded death sentence by the verdict of court. After appealing, the death sentence was converted into a life sentence (Nandi, 2011). He would have to continue a free happy life after committing brutal crime taking advantage of weakness of the judiciary system where it is always said the law is blind. It depends on evidence not on emotion. In Matto's case the justice would have been denied but only the blessings of media, finally the right justice was delivered- delayed but not denied.

Several instances of media involvement like Nitish Katara murder case and Bijal Joshi rape case have assumed significant as well as indispensable option for getting justice. Common people gradually are losing the faith on law and order. Media has been considered as the public court. Media has assumed the role of an opinion maker and creator of public opinion. We have seen that the power of press is to bring about social and political change. We can refer the victory of *Tehelka*, when a special CBI court convicted the former BJP president Bangaru Laxman, of the charge of accepting money, to facilitate government contracts, who posing as arms dealers. It was filmed in a sting operation in 2001 ("Ex-BJP prez Bangaru Laxman convicted in *Tehelka* sting", 2012).

*"The Supreme Court on Wednesday pronounced prominent criminal lawyer R K Anand guilty in connection with the NDTV BMW exposé case. The court found him guilty of criminal contempt of court for attempting to influence the course of justice in the infamous BMW hit-and-run case. The sting exposed Anand persuading key witness Sunil Kulkarni to change his testimony to save prime accused Sanjeev Nanda. The apex Court also held that the sting operation carried out by NDTV two years ago was not a typical case of trial by the media but undertaken in public interest. Several noted lawyers have also welcomed the judgement saying that it would help clean up the system"* (NDTV).

Now the main questions are – is media involvement unethical? Is the media's interference undue? Does the reliability of news media depend on unbiasedness, objectivity and clarity of the information?

### ***What Law says?***

According to the law fraternity, Media has started interfering into court proceedings overlooking the golden principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. In the present day media intervention, the media itself does a separate research and exploration, try to form a public opinion poll to establish the guilt of the accused even before the court takes cognizance of the case (Media Trial, February 20, 2012). The media in India is not spotless. Its motive is not at all doubt-free. It has become impish in its pretensions, and uses to focus many unlawful practices. Large section pampers dishonesty due to special interest. Unethical thoughts use to institutionalize by the biggest players with fancy labels like "private treaties" and "paid news". The guilty in the media too should one day be brought to justice (Media is amoral, but it works, 2010).

According to 200th Report by the Law Commission of India, if media exercises an unrestricted or rather unregulated freedom in publishing information about a criminal case and prejudices the mind of the public and those who are to adjudicate on the guilt of the accused and if it projects a suspect or an accused as if he has already been adjudged guilty well before the courtroom procedure, there is a possibility which can indulge accused prejudice ("Trial By Media", 2006). In fact, even if ultimately the person is acquitted by the court, but at that time it becomes mostly impossible for the accused to clear his reflection. Extreme and unnecessary media hype may misguide the fair trial and results in characterizing the suspect as a guilty. This media trend can be considered as the undue interference with the 'administration of justice', and this practice is treated as contempt of court.

According to UN especial rapporteur on freedom of expression and opinion – the person, who is really guilty or criminal, can get the chance to flee way from the crime place. The pressure on the police from the media builds up and reaches a stage where the police feel compelled to say something or the other in public to defend themselves. As a result to avoid the public



pressure the police introduce a story that they have nabbed a suspect who has confessed. Then the item of breaking news gets its place. Most of the time media persons ignore the fact that the confession in front of police is not acceptable in the courtroom. But the wrong information of the confession (by police and media) of the suspects becomes the reason to destroy his/her future. The real fact sometimes gets hidden and the whole incident distorts. The media also creates other problems for witnesses. The disclosing of witnesses' identity endangers their life as well as the truth of the case ("Trial By Media", 2006).

The same points have been emphasized in a report written by V. Venkatesan (Cover Story, Frontline, Volume 27, Jan-16-29, 2010)

*“The Law Commission’s 200th Report (2006) on Trial by Media points out that in several countries, including the United Kingdom, Australia and New Zealand, any publication made in the print or broadcast on the electronic media after a person’s arrest, stating that the person arrested has previous convictions or that he has confessed to the crime during investigation or that he is indeed guilty, and the publication of his photograph are treated as prejudicial and as violative of due process required for a suspect who has to face a criminal trial. The Law Commission observed: “If media exercises an unrestricted or rather unregulated freedom in publishing information about a criminal case and prejudices the mind of the public and those who are to adjudicate on the guilt of the accused and if it projects a suspect or an accused as if he has already been adjudged guilty well before the trial in court, there can be serious prejudice to the accused. In fact, even if ultimately the person is acquitted after the due process in courts, such an acquittal may not help the accused to rebuild his lost image in society.” The Law Commission’s concerns are understandable, but the process of India’s criminal justice system is lengthy and its many flaws favour the accused rather than the victim. Therefore, there is a need to balance the rights of the accused to a fair trial with the rights of the media and the public to expose these flaws”.*

Voice of Asia Pacific Human Right Network shared their views based on the Indian Law Commission’s report entitled Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971) which has made

recommendations to address the damaging effect of sensationalized news reports on the administration of justice. While the report has still not been made public, news reports indicate that the Commission has recommended prohibiting publication of anything that is prejudicial towards the accused — a restriction that shall operate from the time of arrest. High Courts have the authority to direct postponement of publication or telecast in criminal cases. Sensationalized journalism has also had an impact on the judiciary. The commission declares, "today there is 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" (Udwala, 2007).

In brief, we can refer the quotation of Y K Sabharwal, former Chief Justice of India, that the trial by the media has been widely condemned by the judicial fraternity in India on the ground that judges are affected by such treatment of cases by the media. "If this continues, there can't be any conviction. Judges are confused because the media has already given a verdict" (Chief justice expresses concern at trial by media, 2006).

Besides the law perspective, the society pays a lot for the fake sting operation and media intrusion many times. Uma Khurana case is the living example in this regard. She was a schoolteacher of Sarvodaya Kanya Vidyalaya in Old Delhi. Due to the false sting operation conducted by Live India (TV channel) alleging her involvement in forcing her students into prostitution, she was badly beaten up by a mob and she was put inside the Tihar Jail. But with the help of in depth investigation, she got released and the real culprit was arrested. No amount of monetary compensation can redeem her lost status, which was affected due to the verdict given by media (False Sting Operations, 2013).

The media people keep harping on Article 19 (1) (a) of the Indian Constitution, which guarantees freedom of speech and expression. It has become a common trend to ignore Article 19 (2) which says that the above right is subject to reasonable restrictions in the interest of sovereignty and integrity of India, state security, public order, decency, morality or in relation to defamation or incitement to an offence (Katju, 2012).

The law is governed by the senses and not by emotions. The fact cannot be overlooked due to emotion that the media wants to display. It creates tremendous pressure on the judge presiding over the case (Tripathi, 2013). Judge is supposed to be influenced or confused. Swayed by public opinion thanks to mere media reports, if he indeed is affected, whether he is at all fit to be a 'judge'?

### **Justice Delayed is Justice Denied**

Over thirty million cases are pending in various courts across India and this “unacceptable level” can be reduced by appointment of more judges at various levels and modernization of the judicial system (PTI May 7, 2013). Democratic society believes on the protecting and enhancing the rights of common people. As of December 1, 2012, the working strength of the High Court judges was 613 as against the sanctioned strength of 895 judges ("Legal position in India", 2012), which depicts 32% vacancy of judges across various High Courts in the country ("Cases pending in High Courts and Supreme Court", 2011). The condition of the subordinate level is not exceptional at all. The main reasons for the long delay in the disposal of cases are the high number of vacancies in position for judges in the courts, increase in institution of fresh cases, inadequate physical infrastructure and staff, frequent adjournments etc. for many countries of the third world. The total inmates in different jails in India are 385,135 as on 31 December 2013 and the occupancy rate is 112.2 in 2012. Out of them, convicts are only 33.2 % and the percentage of undertrials is 66.2% (Prison Statistics India, 2012).

According to PRS Legislative Research Report (30th September, 2010), a total of about threecrore cases are pending in subordinate courts and 42 lakhs in High Courts. Approximately 9% of these cases have been outstanding for over 10 years and a further 24% cases have been pending for more than 5 years. Pendency has increased by 148% in the Supreme Court, 53% in High Courts and 36% in subordinate courts in the last 10 years ("the PRS Blog » An Overview of Fast Track Courts", 2010). “India has 15 crores of pending cases by 2040. At present, nearly 19,000 judges, including 18,000 in trial courts, are dealing with a pendency of 3 crore cases, resulting in a civil case lasting for nearly 15 years and giving credence to the adage "justice delayed is justice denied" (Times of India, 13 January, 2013).

The aforementioned statistic proves the pity condition of our judicial system with varied loopholes. The power and money play with the system without any fear and restriction. The system is not at all freed from corruption. When extending the dates, threatening the witnesses, wiping out the evidences are allowed by the law, the high profile culprits get clean cheat very easily. On the other hand, poor and weaker section has to struggle a lot to get justice (Ray & Dutta, 2012).

On the contrary, there are so many cases for an average time 20 years battle for justice. A few cases are there where the common masses have to spend the entire life, and sometimes it ends up after death. The family has to suffer mentally, physically, and monetary a lot without any cause. So many cases are there where owing to money scarcity, the cases cannot be continued and justice is not delivered. Near about 20% judges are involved in corruption in many ways (India Corruption Study, 2005 conducted by the India Centre of Media Studies) (Bhatia, 2011). So in this situation media intervention remains the ultimate option for getting fair justice. It is true that at the present day media is not at all a clear entity. In that case, the judicial system is not at all free from corruption. On the other hand, if everything is working perfectly like law, judicial system, police administration- the hierarchy of system, the media would not have got the scope to poke the nose.

In most of the incidents, media play an effective role in awakening the nation and uniting it for a common cause. In case of Delhi gang rape, the media took up its strongest stand, which accelerated one of the biggest people's movements of recent times against the government demanding an effective action (Kumar, 2013).

### **Concluding Remarks**

Involvement of Media in any under trial case has become a powerful tool of investigative journalism to find out the lapses in murder cases like Jassica Lal where justice was denied. In a similar way like that of the Arushi case, media resorted to investigative journalism to unearth hidden facts and evidences in this case. If judiciary process is working perfectly, then what is the need of media interference? For instance, the Jessica trial or Arushi murder case took long time to get to a satisfactory end. It is also true that the failure was not because of judicial lethargy, but rather owing to several extraneous factors such as police indifference and wanton delaying tactics on the part of the defense.

But it is also true that ethic cannot be above the law. So media needs to follow a line of control at the time of public trials. It should emphasize the truth and should help the court to project the right verdict for right justice. Malpractice of unethical issues in media is not at all ignorable matter. There are some reasons where the media persons get involved in unethical practices. The following points are very much considerable factors- Judiciary system needs-

- A strong Monitoring Procedure with strong monitoring committee.
- Increasing the number of Judges at various levels<sup>1</sup>.
- Fixation of time for disposal of case.
- Regular training (between fixed intervals) to the members related to the judicial system.
- Instigating the urge of loyalty and accountability of the persons related to judicial system.
- Monitoring on strict implementation and execution of law in proper way.
- Restriction on Adjournments (it should be according to the requirement)
- Alternative dispute Redressed System

Along with the strong and proper support from the judiciary system, media can do a lot for the deprived society.

On May 03, 2007, in the world press freedom day, the then Union Minister for Information & Broadcasting, Priyaranjan Das Munshi opined that Indian media is enjoying the freedom of press, but it did not allow freedom of journalists, ‘how many journalists are protected by the norms and regulations of employment? Journalists are working in most pitiable conditions’. He further alleged that most journalists were paid by ‘vouchers’ and did not receive regular salaries and wondered whether such practices reinforced the freedom of the press.

On the other hand, speedy dramatic change in the last two decades can be seen. Cut Throat completion and the sustainability have reached the zenith. So in that case, uncontrolled freedom of press may adversely affect the security of the state, public order, morality, etc. No one can live in isolation; everyone has to live in society. So an individual should not exercise her freedom in a manner so as to harm others or society. Otherwise she/ he will find it difficult to survive (Katju, 2012). As beautifully remarked by the first Prime Minister of

independent India, Pandit Jawaharlal Nehru - “I would rather have a completely free press with all the dangers engaged in the wrong use of that freedom than a suppressed or regulated press.” It has to be remembered that freedom of expression is not absolute, unlimited or unfettered and all circumstances, as giving on an unrestricted freedom of speech and expression, would amount to uncontrolled license (Tripathi, 2013).

Media trial is also an appreciable effort, which has been able to start a revolution. Nevertheless, the revolution cannot overlook the welfare of the society. Therefore, it is the moral duty of the media to show the truth and that too at the right time.

We cannot deny the truth that the media should be imposed proper considerable restriction on their function. Otherwise along with many good and positive things, media will continue the cat race for better profit. We may get the witness of the fact from the instance of media coverage of the terrorist attack in Mumbai where the enemies were planning their further steps depending on media movement. Instead of unduly debate on media regulation, it is more significant for the nation to focus on media literacy to develop at all levels including media persons and common people. This coupled with enhanced quality of general education and steps to improve journalism education in the country, will make any self-regulatory mechanism internal to the media, even as it explores new, but sensible, forms of investigative journalism. On the other hand, it can be said that journalists need proper training on media law, Indian Constitution, human rights etc. Not only that, these topics should be included in journalism courses in various levels. We require a media literacy movement in the country right now.



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<sup>i</sup>The Constitution (120th Amendment) Bill, 2013 or the Judicial Appointment Commission Bill, 2013 amends provisions related to appointment and transfer of judges to the higher judiciary. It establishes a Judicial Appointments Commission (JAC) to make recommendations to the President on appointment and transfer of judges to the higher judiciary. Now every body is looking for the new NDA government to take a speedy decision on the appointment of the judges in various levels.