

MEDIA: A CONCEPTUAL REALITY OR A LEGAL FICTION

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ABSTRACT

The spirit of any nation lies in its Constitution and alike, every nation the Constitution of India stands on its indispensable three pillars namely legislature, executive and judiciary. Owing to the need of the elevating world media has emerged as the fourth pillar of the democracy. We are not unaware of the potential media possess as its own tools and techniques inhibits the power to influence and manipulate not only the minds and opinions of layman but also engulfed within itself paramount institutions like Judiciary and Democracy. In this paper the authors have tried to deal with the functioning of judiciary and democracy with the severe influence of media on them and also tried to seek the answers as to what extent does the media has the liberty to dominate the decisions of these underpinning institutions. Firstly, the backbone of a nation is its Democracy which involves the major participation of its citizens and due to the ascendancy of media, the people brought freedom of communication into practice with all its pros and cons which is heading us towards the quagmire. Secondly, one of the vital institutions of our nation which is judiciary is now not confined to codified laws but take the precedents as the base while delivering some pivotal discernment which is majorly persuaded from the ideologies proffered by media. For ideal state the three institutions namely judiciary, media and democracy must work juxtapose to each other but on the contrary independently and in their own spheres. So, it can be said that media can only be accepted as a formidable means of expression but at no cost can obliterate the fundamental functioning of the judiciary as well as democracy. Finally, in conclusion the authors have tried to answer the above raised questions.

Keywords: Media, Judiciary, Media trial, Legislation, Constitution, Executive, Freedom of Speech and Expression, Judgements, Rights.

INTRODUCTION

‘Democracy’ a word which comprises immense amount of power and virtuosity, it has a competence to change the orientation of the entire nation. The core concept of this is as profoundly defined: to the people, by the people, for the people, which means the very essence of any democratic nation originates from the people and gradually ends for the people. Thus, an ideal democratic state imbibes within a good governance and it can only procure when all its three federations namely legislature, executive and judiciary works in correlation to each other but in their own respective spheres. As the preamble to our supreme constitution envisions that the sovereignty of our law of the land lies in its PEOPLE. Which ultimately frames the quintessence of a federal democratic state. Whereby the nation works through the representatives elected by the free will of the citizens who forms the political substructure of any democratic nation. With the evolution of time and ideologies of the population the participation of the common people is evident to all. This participation is only possible when people are well apprised of the all the matters and this could only happen through a reliable and staunch source of information persuading their ideologies. As rightly said by Wynton Marsalis “We always hear about the right of democracy, but the major responsibility of it is participation.” Media is the instrument which brings multiple ideas into one concrete thought which holds the power to address the citizenry participation.

EMERGENCE OF MEDIA:

As soon as we opted for a democratic nation which has already stated above mean a ‘Government of the people’. Which means a mass participation of its citizens in the decision-making process. And it was the media which could effectively be used as a medium for informing and gaining the people’s opinions by making them aware of the on-going issues, news etc.

This idea has been implicitly mentioned in the Indian Constitution under Art.19 which gives us the right of speech and expression.

Tracing our roots in the history this all started as an unprecedented wave of reform back in 1624, long back before independence whereby the first printing apparatus was established in Bombay followed by madras in 1772.

India’s first newspaper Calcutta General Advertise, also known as the Bengal Gazette was established and started in January 1780.

The media was emerging with utmost pace taking into account its primary objectives of

unbiased reporting (which involves informing the common public thereby making them stand in a position with a viewpoint) and simultaneously establishing a nation for good democratic governance.

With the passage of time a technological advancement, especially in the last two decades, the advent of cable televisions, local radio, social media, and the networks developed within and out of the nation is commendable and which holds the capacity to easily frame and mould the public opinion and not to forget that how in the last few years the media not only have dared to surpass or operate outside its bounds but has also reached a point where it has wantonly assumed the role of judiciary as well as executive in developing any law.

Although the impact what media has made cannot be overlooked. It has fiercely broken the traditional convention and has always led a country to be at pace with others. Thereby effectively acquired the position of being called the watchdog or the conscious keeper of the democracy.

MEDIA TRIAL:

A very conventional tool nowadays, although a recently coined phrase, nearly in the late 20 or early 21st century, which in general terms means a strong impact or reform or an idea that a renowned media possesses to build a strong opinion of the majority of people involved and which does not include the use of a state-controlled press rather is used to more scandalize, publicize and criticize the accused without recourse or assistance to any proper procedure of delivering justice.

The subject of “trial by media” or prejudice due to “pre-trial” publications by media is closely linked with Art.19 (1) (a).

CONSTITUTIONALITY OF MEDIA TRIALS:

Article 19 of the International Covenant on Civil and Political Rights, 1966¹, 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.”²

¹ International Covenant on Civil and Political Rights, 1966, Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

²Article 19 of the International Covenant on Civil and Political Rights, 1966.

Nonetheless, this freedom comes with a rider that the exercise of this right comes with “special duties and responsibilities” and is subject to “the rights or reputations of others”. The right to freedom of speech and expression has been guaranteed under Article 19(1) (a) of the Constitution of India. Even though freedom of press is not a separately guaranteed right in India unlike the United States of America, the Supreme Court of India has recognized freedom of press under the umbrella right of freedom of speech and expression as envisaged under Article 19(1)(a) of the Constitution of India³.

In Re: Harijai Singh and Anr. and In Re: Vijay Kumar⁴, the Supreme Court was presented with the opportunity to determine the extent of press freedom. The court acknowledged press freedom as a vital requirement for a democratic system of governance and considered it the foundational right from which other liberties in a democratic society stem. The entitlement outlined in Article 19 Clause 1A encompasses both the right to access information and the right to convey information through various mediums, including print, electronic, and audiovisual forms.⁵

It was stated in ***Hamdard Dawakhana v. Union of India***⁶, that the right includes the right to acquire and impart ideas and information about matters of common interest.

The Supreme Court has stated that trial by press, electronic media or trial by way of a public agitation are instances that can at best be described as the anti-thesis of rule of law as they can lead to miscarriage of justice. In the opinion of the honourable court, a Judge has to guard himself against such pressure⁷.

In the case ***Anukul Chandra Pradhan v. Union of India***⁸, the Supreme Court noted that it is essential to avoid any perception that public attention given to such cases might weaken the focus on fundamental aspects of a just trial and core principles of law. This includes upholding

³ TRIAL-BY-MEDIA: DERAILING JUDICIAL PROCESS IN INDIA: http://www.nalsar.ac.in/pdf/Journals/Media%20Law%20Review_2010.pdf.

⁴ (1996) 6 SCC 466, paras 8, 9 and 10.

⁵ *Secretary, Ministry of Information & Broadcasting v. Cricket Association of West Bengal*, 1995(2) SCC 161; *Romesh Thapar v. State of Madras* 1950 SCR 594; See also *Life Insurance Corporation of India v. Manubhai D Shah*, (1992) (3) SCC 637.

⁶ 1960 (2) SCR 671.

⁷ *State of Maharashtra v. Rajendra Jawanmal Gandhi*, 1997 (8) SCC 386.

⁸ 1996 (6) SCC 354.

the presumption of innocence for individuals who are ultimately found guilty following the trial process.

Under the Contempt of Court Act, 1971, pre-trial publications are sheltered against contempt proceedings. Any publication that interferes with or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding, which is actually ‘pending’, only then it constitutes contempt of court under the Act. Under Section 3(2), sub clause (B) of clause (a) of Explanation, ‘pending’ has been defined as “In the case of a criminal proceeding, under the Code of Criminal Procedure, 1898 (5 of 1898) or any other law – (i) where it relates to the commission of an offence, when the charge sheet or challan is filed; or when the court issues summons or warrant, as the case may be, against the accused.”

Certain acts, like publications in the media at the pre-trial stage, can affect the rights of the accused for a fair trial. Such publications may relate to previous convictions of the accused, or about his general character or about his alleged confessions to the police. Under the existing framework of the Contempt of Court Act, 1971, media reportage, as seen during the

Aarushi Talwar case, where the press, had literally gone berserk, speculating and pointing fingers even before any arrests were made, is granted immunity despite the grave treat such publications pose to the administration of justice. Such publications may go unchecked if there is no legislative intervention, by way of redefining the word ‘pending’ to expand to include ‘from the time the arrest is made’ in the Contempt of Court Act, 1971, or judicial control through gag orders as employed in United States of America.

Due to such lacunas, the press has a free hand in printing colourful stories without any fear of consequences. Like a parasite, it hosts itself on the atrocity of the crime and public outrage devoid of any accountability.⁹

MEDIA AND EXECUTIVE:

⁹ Nimisha Jha NLIU, Bhopal, Constitutionality of Media Trials in India: A Detailed Analysis, By [kanchi, November 13, 2015](#)

Executives are the executors who executes and enforces the laws. The main purpose of any legal system is to formulate such a law so as to serve and regulate its citizens as well ensure the good and smooth governance.

Governance is a mechanism which is done by the Government of country and the Government is made by the representatives elected by the common public who ultimately makes the legislature.

So paradoxically the legislation is put forward or is created by those largely influenced by the public opinion as are the public representatives.

This influence is undoubtedly swayed by the media and thus the media has the ultimate accountability in the creation and development of the legislation.

Witnessing the current scenario, many media houses are owned and controlled by powerful political parties who have a significant stake to eventually clinch their propitious motives.

There have been instances which very firmly illustrates the power of media in creation and influencing the law. The cumulative effect of the media intervention leads to pressurizing the legislators in framing and development of the law.

The media was mainly created for the purpose of manifesting the latent and immanent characteristics of any democracy that is bringing out the mass participation of its citizens.

But the media has created the fiasco by interfering and deliberately hampering the demeanour of the persons representing us as our legislators executing and formulating the laws.

Without any doubt media plays an indisputable role in the democracy and there are number of examples of laws and policies which came into existence owing to the persuasion by the media on the citizens of the country.

JUDICIARY VIS-À-VIS MEDIA:

Media, the fourth pillar is a force that runs juxtapose to the administration of justice in the country. And in contrary time's media is that institution which possess significant amount of power that guarantees accountability and transparency. The role of the media has been augmented due to its power to mould the opinion of the general public and influence on judicial decisions. Over the years media emerged as a one of the most influential body due to different forms of publications like newspapers magazines, journals, radio and finally the internet. In today's world it becomes a matter of seconds that a single click can influence the opinions of thousands of people.

Media wields substantial influence across nearly all aspects of society. Functioning as a watchdog, it adheres to specific principles while fulfilling this role. The adage "with great power comes great responsibility" aptly applies, signifying the media's duty. Consequently, the media bears the obligation to present matters of public importance with unwavering sincerity and impartiality. Even a minor lapse on its part can profoundly alter the outlook of countless individuals.

Beyond reporting, the media also plays a crucial role by acting as a mediator between the government and the general public in context of legal and political issues. One of the contentious matters nowadays is trial by media. "Trial by media" denotes the engagement and influence of media channels such as print, TV, radio, and the internet in a case to the degree that it shapes public sentiment about the case prior to the formal verdict being reached through a legitimate judicial procedure.

One cannot deny the fact that media is playing quite an efficient role in uncovering scams, scandals and wrongdoings to the public. And in cases related to national interest media can be called as a difference maker by persistently keeping the citizens updated about the details of such cases but sometimes it gets carried away and goes beyond its banal role of being an informant. And from here the question arises that up to what extent does media has authority to manipulate the decisions of judiciary by fabricating the facts.

But it would be unjust to say that it's just the media who has extended its authority of interfering because if on one side it's the fault of media to manipulate the views of masses with selfish motives, on other side it's the competition among different channels for making profits which bounds them to do such acts of misleading the perspective of entire nation by exaggerating the truth.

Yes, it is definitely media's job to be an informant but the power of decision lies exclusively in the hands of a reliable and trustworthy judicial system. In many cases, the interference by the media hampers the administration of justice and misleads the public to form an opinion about a particular case even before it is adjudicated upon by the courts. Time and again in different cases it can be witnessed that the media has substituted its role from judiciary.

Now the question is that who will decide the limits of interference of media in judicial system of the country and how one can prevent media to hinder the judicial procedure? And the answer to this question lies in finding a way between Freedom of Press and Contempt of Court. Freedom of speech and expression is a fundamental right but the extent of its exercise may not be absolute. Who can exercise this right and to what extent is subject to various restrictions in order to ensure that there is no overlapping between the rights of two parties.

Freedom of speech and expression is guaranteed to the people of India under Article 19(1)(a) of the Constitution. It is regulated or restricted at various steps to ensure its healthy use. This freedom of speech and expression extends its way into the arms of the media as well. Media uses this as a tool to pass on information on burning issues of national importance to the public. This casts responsibility on the media to exercise the granted liberty cautiously.

Freedom of Press is not specifically mentioned in Part III of Indian Constitution, however the Supreme Court in a number of judgments has recognized that freedom of speech and expression also includes freedom of press. When the media oversteps its case, sometimes by reporting certain news to the public in a biased fashion, it would be checked under the bars imposed upon this provision of law. The absoluteness of this provision is curtailed by reasonable restrictions imposed by clauses (2) to (6) of the Article 19. These restrictions are placed in lieu of public order, morality, defamation, obscenity and contempt of court.

There is also a conflict between Article 19(1) (a) which ensures freedom of the press under freedom of speech and expression and Article 21 which implies the right of an individual for a free and fair trial under the fundamental right to live.¹⁰ Thus, it is essential to balance these two rights in order to avoid any conflict. It is time that guidelines are issued for the extent and role of media while a matter is sub judice.

The analysis of a number of media channeled cases may help us to arrive at a benchmark which we can be used to hold the media from pushing its boundaries in pursuit of freedom of speech and expression.

¹⁰ Maneka Gandhi Vs Union of India 1978 SCR (2) 621.

Venkataramiah, J. of the Supreme Court in *Indian Express Newspapers Bombay Pvt Ltd. v. Union of India* has stated:

Democracy embodies a system where the people govern themselves and their interests are represented. It's clear that each citizen should have the right to engage in the democratic process, and to facilitate informed decision-making, open and comprehensive discourse on public affairs is vital. This perspective underscores the constitutional stance on press freedom in India.¹¹

In *Printers (Mysore) Ltd. v. CTO* the Supreme Court has reaffirmed that while freedom of the press isn't explicitly outlined as a fundamental right, it is inherently encompassed within the broader freedom of speech and expression. This liberty of the press has consistently been a valued aspect in democratic nations, often referred to as the "fourth estate" of democracy.¹²

In *R. Rajagopal v. State of T.N.* The Indian Supreme Court has affirmed that press freedom encompasses unrestricted discussions on the engagement of public figures in public matters and events. However, when it comes to their personal lives, a careful equilibrium between press freedom, the right to privacy, and the prevention of defamation must be maintained in alignment with the democratic principles set forth in the Constitution.¹³

The insights provided by the Delhi High Court in *Bofors Case or Kartongen Kemi Och Forvaltning AB and Ors. vs. State through CBI* remain highly pertinent. The court leaned towards safeguarding the accused's right to a fair trial while assessing the media's role in enhancing the efficiency of the criminal justice system. It's often acknowledged, and with substantial accuracy, that media exposure encourages those with knowledge of an incident to share information, deters false testimony by putting witnesses in the public eye, curbs criminal behavior by publicly denouncing it, and most importantly, stimulates public discourse on critical matters.¹⁴

In *State of Maharashtra vs. Rajendra Jawanmal Gandhi*, the Supreme Court noted that a structured legal procedure exists for conducting the trial of individuals accused of crimes. Allowing trials by means of press, electronic media, or public outcry directly contradicts the

¹¹ 1986 AIR 515, 1985 SCR (2) 287.

¹² 1994 SCR (1) 682, 1994 SCC (2) 434.

¹³ 1995 AIR 264, 1994 SCC (6) 632.

¹⁴ 2004 (72) DRJ 693.

principles of the rule of law. Such practices could easily result in wrongful convictions. Judges must shield themselves from such pressures and adhere strictly to legal guidelines. If a person is found guilty of an offense, the judge's focus shifts to determining the appropriate sentence based on the provisions of the law.

And if we talk about the contrary times the landmark case, which was one of the thorny issue 'Triple Talaq' in which media played a pivotal role in influencing the outlook of masses on such controversial matter.

POSITIVE AND NEGATIVE IMPACT OF MEDIA:

The process can encompass swift changes along with opposition to adaptation. Media's significance is pivotal, encompassing tasks from fostering a sense of national identity and unity to invigorating people's determination to achieve growth and advancement, all while addressing present-day obstacles. The downside is that the media can become the instrument of state propaganda. The media in Pakistan, in the sixty years of the country's existence as a sovereign and independent state, rendered service in the varied aspects of national endeavour.

The 21st century presents novel prospects and challenges, underscoring the pivotal role of media. While states can be intentionally developed through human efforts, the evolution of nations typically occurs through intricate, organic processes, often beyond human control. This distinction is essential as we delve into the impact of factors like media on the journey of national and state development, acknowledging exceptions where applicable.

Observing the substantial impact media is having, it becomes evident that an autonomous media plays a vital role in enhancing governance, minimizing corruption, enhancing economic efficacy and stability, and instigating beneficial societal and environmental shifts. Media disseminate information to various stakeholders, empowering them to engage in discussions and choices that mold their existence. Moreover, media act as a critical oversight mechanism in democracies, enabling citizens to keep their governments and representatives responsible, ultimately fostering improved policies and service delivery. Due to these reasons, the advancement of media should be embraced as a favorable development objective, forming the foundation for other progressions.

As we are well aware of the reality that everything has its pros and cons. Similarly, with such pros media also consists of some of the negative effects with the evolving world media is

somewhere drastically devolving us. With the time media has taken complete control over us our views, our perspectives and moreover our lives. And nowadays because of the competitive culture, media has started creating false hopes among the public and is somewhere misleading from the major issues which are really affecting us. They are seeming to follow the words once said by Adolf Hitler “Make the lie big, make it simple, keep saying it and eventually they will believe it.”

CONCLUSION:

"By making one part of a country aware of other parts, their people, arts, customs, and politics; by permitting the national leaders to talk to the people, and people to the leaders and to each other; by making possible a nation-wide dialogue on national policy; by keeping the national goals and national accomplishments always before the public--thus modern communication, widely used, can help weld together isolated communities, disparate subcultures, self-centred individuals and groups, and separate developments into a truly national development." - “Father of Communication Studies”, Wilbur Schramm

Owing to our first step in the world of media started by James Augustus Hickery in the 1980 in India. Since then, the media has rolled into various forms and attribute, perpetually and constantly shaping the human minds.

As strongly argued by the hon’ble chairman of the drafting committee, referring to the press is essentially referring to an individual or a citizen. The press does not possess distinct privileges that diverge from those granted or exercised by individuals in their personal capacities. Editors and managers of the press are no different from any citizens, and when they opt to contribute to a newspaper, they are simply exercising their entitlement to freedom of speech and expression, based on their judgment. Consequently, there is no compelling requirement to specifically address the freedom of the press.

The main/ paramount objective of the media of any nation is to equip its citizens with the true, reliable and unbiased information for making them have a viewpoint in any subject and aiding any country by developing the nation by broadening the thinking of its citizens and their views. But with the introduction of many liberalized policies there has been an upsurge of news channels, media houses, and social media instances which on regular basis is hampering the real work of the media by diverting the focus from the main issue to the trivial issues.

As well quoted- “with great power comes great responsibility and accountability”. But this



phrase has not been duly cohered by the media in the recent times. As the media presents the tainted facts; instead of presenting them as they are.

The media nowadays tries to create a mirage by over sensationalizing the inconsequential stories rather than focusing on some major issues involving the national interest.

At last, a media is an inseparable and conspicuous part of any democracy as it makes the very essence of the democracy by gathering the mass participation of its democratic citizens.

If the media diligently works and tries to fulfil all its duties without surpassing its jurisdiction and interfere g in the working of the other federations of the democracy can be used as a significant and evident tool for empowering its citizens by making them fully aware of the real instances of their country and seeking the justice or when used as a medium for dirty politics can land the whole nation into a stigma.

An unprecedented reform is suggested for a responsible, transparent and accountable media which holds onto itself the manifesto of the democracy of any nation.