

# Judiciary and Media: Complementary or Competitive

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## Abstract

Judiciary and media are important pillars of democracy. The Democracy is a way of life, which is people friendly and ensures the welfare of the society. The strength of democracy depends upon the strength of each pillar and in what way they complement each other. Judicial system ensures the justice availability to all by following the principles of equality, accessibility, credibility, transparency. On the other hand free and responsible media raises the voices of deprived people and make aware of them about economic, social, political problems and keep watch on all activities of government to protect the interests of the public. The media plays an important role to encourage reconciliation by being a bridge between the government and the people. It shapes the public opinion during transitional justice in which normally truth Commission fails. Both become complementary in nature when they are engaged in the same task to discover the truth. Now media tries to enter in the jurisdiction of the Judiciary system by media trials. Media trials are defined as a process in which media investigates any legal case by its own way and put its verdict among society before or after the Court verdict. Due to immense faith of public in media, its verdict become final and imposes lots of pressure on judgments and reputation of the accused which may be innocent. No doubt, a free and healthy media significantly involved when justice is totally denied or delayed but now, the media is becoming news creator to increase its TRPs and involved in money making businesses. This paper is a humble effort to analyze the role of media involvement as complementary or competitive in establishment and administration of the justice in the society by investigating the history of media trials in India.

**Keywords:** Judiciary, Media, Democracy, Justice, Media trial, Verdict

## Introduction

The power and importance of media in a democracy is well recognized by Indian Constitution. So Art. 19 (1) (a) gives the right of Freedom of speech and expression to it. However the freedom is not absolute is subject to reasonable restrictions by the sub clause (2) of the same article. Free, unbiased and powerful media is essential for survival and flowering of democratic culture. Media has significant role as a communicator, informant, educator and counselor and becoming the part of everyone's life when private players entered into the industry. Judiciary ensures the justice availability to all and media helps the judiciary system by raising the voices of deprived section of the society. It facilitates us to be conscious and attentive regarding current issues related to our welfare and provokes our thought process and helps to get justice which are often denied to vulnerable section. It helps the judicial system wherever and whenever administration failed to fulfill its duties then media highlighted the facts and facets of to the common mass and ensure justice. It presented the truth and create pressure on the government to speed up the process by media trials.

## Media Trial

The word, 'trial' means a formal judicial examination of facts, proofs for justice, simply proceeding before the Court of justice. Media trials are defined as a process in which media investigates any legal case by its own way and put its verdict among society before or after the Court verdict. Trial by Media word became popular in the late 20th century and early 21st century. It is the impact of media coverage through electronic or print mode on a accused person, his/her family or institution's reputation by formulating the sense of right or wrong in the minds of the public regardless of any verdict in a court of law. Media is not only a means to express one's

feelings, opinions and views, but it also plays an essential role in the formulation of public opinion on issues of public importance to serve the public interest. It amplifies the voice of people and communicates their opinions to the government and lawmakers. It may be called 'public protests through media'. Media plays a vital role in making or changing the opinion of the society. The investigative role of press has been useful to keep right the mal-administration of government, exposing crimes and unlawful acts and disseminating information of public interest.

### **Media and Judiciary**

The judiciary system has been assigned the key responsibility of justice to all in the society, there have been established various courts at all levels of the country to get the justice properly in stipulated time. Legal system exists for litigants. The governmental statistic related to availability of judges, courts and number of pending cases depicts the pity condition of our judicial system. The system is not at all freed from corruption. The power and money play with the system without any fear and restriction. It has become the coin in the hands of judges, lawyers and of course authoritative and influential persons. When extending the dates, wiping out the evidences, bribing the witnesses, are allowed by the law, the high profile culprits get clean chit very easily. On the other hand, poor and weaker section has to struggle for many years to get justice even they spend the entire life, and sometimes it ends up with death. The family has to suffer mentally, physically, and monetary a lot without any reason and justice was not delivered. It is rightly said Justice delayed is justice denied. The agony of the litigants is felt by media and come forward to investigate the truth via media trials. In the developing countries, media trial is getting prominent position day by day. In most of the incidents, media play an effective role in awakening the nation and uniting it for a common cause.

Though the government and political parties are not much favour of the media trial, but due to the extreme pendency problem and declining faith in the judicial system, public supports the media trials. The involvement of media in any under trial case is very sensitive issue to be resolved. But now the question arises that is it right to give powers to the media to involve in under trial cases in courts? To find the answer of this question it is must to analyse the history of media trials in India..

### **Historical Analysis**

#### **Media trial act as Complementary to Judiciary**

The judiciary and the media share a common bond and play a complimentary role to each other for the betterment of the society. Both the judiciary and the media are engaged in the same task: to discover the truth, to uphold the democratic values and to deal with social, political and economic problems. Media is generally referred as the "eyes and ears of the general public". The intervention of media in recent times has drawn appraisal as constant effort of media to discover truth has played a pivotal role in delivering justice in the famous cases:

### **Jessica Lal Case**

A 34 years old women Jessica Lal was a bartender at the Tamarind Court restaurant in Mehrauli which is high profile restaurant in Delhi. The main accused Manu Sharma a 24 years old boy was a son of a powerful politician asked for a drink from her at around 2 o'clock at night but she refused. Then he murdered her by firing and this was seen by several witnesses, he was been able to hide and to dispose of the attack weapon. He had very influential background. The three key witnesses were either bribed or threatened.. The Delhi trial court in 2006 acquitted the accused in the case due to lack of proper evidence. So, in this case justice was not delivered, but denied. With regard to the acquittal there was a huge public dismay, media aroused public unrest in the form of demonstrations and protest marches that were able to establish justice in this case. As a result the Delhi High court ordered a reinvestigation of this case. The retrial which took place due to the pressure mounted by the media and compelled the prosecution to appeal in Delhi High Court to fast track the proceedings. That was the time when the media and public come forward together. The breakdown of the Indian judicial system was termed as 'miscarriage of justice' by the media then the media started 'justice for Jessica campaign' through sting operation, poll, Public pressure built up with newspapers' headlines such as "No one killed Jessica", played a crucial role in delivering the justice. This is the case where it clearly proves the corruption of the Indian judiciary system as well as the influence of money and power. 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. Without media's intervention, it would have not been possible to get justice for a common man.

### **Priyadarshini motto case**

The young law student Priyadarshini motto was raped and murdered by Santosh who is the son of influential ( then Joint Commissioner of Police in Delhi) police officer. He was arrested based on witness, the finger print sample, DNA report, helmet along with other relevant evidences. Additional Sessions Judge acquitted him by giving the benefit of doubt. It was clearly seen that the evidences were fabricated; the background of acquittal works a lot but with the intervention of media investigation of the case was fast-tracked and the accused was convicted. Santosh was awarded death sentence by the verdict of court, after appealing, converted into a life sentence. With the blessings of media, finally the right justice was delivered- delayed but not denied.

### **Nitish Katara Case**

The young man, Nitish katara was kidnapped and murdered who was in love and dated the daughter of a powerful politician. 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.

### **Sanjeev Nanda Case**

Nanda, son of a influential and wealthy businessman family alleged with BMW hit and run

case killing over six people while speedy driving his BMW in intoxication. . While the trial was pending even after the eight years of the incident, NDTV telecasted a sting operation to expose the unholy nexus in which Nanda's lawyer, R.K Anand bribing the witness for the accused while the public prosecutor being complicit in favor of defense. Media intervened and case was sub-judice helped in the discovery of the truth. the Delhi High Court then initiated the Suo-Moto contempt proceedings and held the special public prosecutor and the defense counsel guilty of contempt of court and they were debarred from appearing in the Delhi High Court and its subordinate courts for few months.

#### **Nirbhaya Case/ Nanavathi case**

Probably the most significant incident that ought to be mentioned in this regard is the case of the terrible gang rape of a student (better known as Nirbhaya/Damini by the media fraternity, as a mark of respect to her courageous nature) in New Delhi in December, 2012. Unlike many other rape cases that have been pending in the courts for years, the police force, ministries and judiciary were impelled to give special importance to this case [Nirbhaya Rape case, as it is commonly known as] because of the huge upsurge of the public.

#### **Ex-BJP prez Bangaru Laxman**

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).

People are losing the faith on law and order gradually. Media acts as the public court. In these cases the media through persistent campaigns for justice, highlighting shoddy investigations, exposing the nexus between defense and prosecution the media played a prominent role in ensuring that justice was done and made sure that the victim's families get justice. The media mobilized the opinion of public and transformed what would have ended as a losing fight for the families of the victim into public demand which is strongly articulated for a fair trial. Conventionally and constitutionally, the media has not been assigned any duty of justice. It doesn't have the power to change any decisions made by the various arms of a state—the legislature, executive and the judiciary. Yet, the media plays one of the most important roles in the functioning of any society.

#### **Media act as Competitive and Threat to judicial system**

Media is now presenting itself as "public court" which can also be referred as "Janata Adalat" and has started interviewing the witnesses, conducting the investigations and other aspects related to the cases which are pending before the court of law. It made continuous reporting of the news and give its own pre-judgments even before the court's verdict. Due to the media reports, the jury got influenced which affect the administration of justice and may lead to miscarriage of justice. Media is trying to be judgmental that affect the independence of

judiciary. Sometimes media trials are held even after the verdict is announced when the public is not happy with the judgment., and such trial conducted by the media also affects the right to fair trial of the accused and brings the conflict between the freedom of press, fair trial and trial by media also affects the independence of judiciary, the judge has to be impartial and shall pass the verdict only on the basis of the facts and the evidence produced in the court of law but the hype created by media prejudices the mind of judges and may force the judge to pass the verdict against the accused even though the accused is innocent. It completely ignores the vital gap between an accused and a convict keeping at stake the golden principles of "guilt beyond reasonable doubt" and "presumption of innocence until proven guilty". These interferences imposes a threat to fair administration of justice and constitutional guarantee of fair trial which may be seen in following cases.

#### **Arushi Talwar case**

A 14 year old school girl, Arushi was murdered in her home, then senseless journalism, in their scurrilous coverage of the investigation, the sections of media portrayed the victim's parents as murdered of their daughter before the same was yet to be proved by the court. The media entered into the personal lives of Arushi and her parents, which published the private correspondence of Arushi and her father. Media trials prejudiced the minds of judges, the parents of the victim were sentenced to life imprisonment. The parents of the victim have appealed against the conviction and then the Allahabad High Court acquitted the parents of Arushi Talwar and held that the CBI had failed to prove the guilt of them beyond reasonable doubt. The matter raised serious legal concerns which require redress apart from trial by media, breach of confidentiality, violation of privacy and the defamation of concerned persons. Media has fetched a negative result in the case .

#### **Sheena Bohra Murder**

In this media reported each and every aspect of the accused life case even that aspects which have no relevance to the case. This made media trial controversial.

#### **Kasab case**

Even the further delay in the final verdict of **Kasab** was hindered due to the various polls, discussions and reactions of people that were being transmitted to the government officials directly or circuitously through the media. The entire nation became frustrated when they read about the figures of money that were being spent to provide 'security' to a person who mercilessly shot and killed innocent people.

#### **Jasleen Kaur Harassment Controversy Case**

In August 2015, Delhi woman Jasleen Kaur posted a photo of a man(Sarveet Singh), on Face book and accused him for harassment. She received widespread support on social media including from national celebrities and politicians. This case also followed by media and Sarveet was labelled as "Delhi ka Darinda" and "National Pervert" that led to the arrest of Sarveet Singh and was bailed the day after. Sarveet Singh was found innocent after the

inquiry. He faced a lot of public humiliation and also lost his job due to such media coverage.

#### **Valson Thampu case**

Mr. Valson Thampu, the Principal of St. Stephen Institution alleges that the media has targeted his institution as minority institution. In this case the teacher of St. Stephen Institution was accused of molestation of the student and the allegation on Mr. Thampu was that he pressurized the student to withdraw the complaint against the teacher. Mr. Thampu claims that he became third time the victim of Media Trial. The principal of the institution demanded for a probe by the CBI and offered would resign if he found guilty.

#### **Uma Khurana case**

In this case is the living example in this regard. Uma Khurana was a school teacher of Sarvodaya Kanya Vidyalaya in Old Delhi. Live India (TV channel) conducted a false sting operation by alleging that she was involved in forcing her students into prostitution. Due to this she was badly beaten up by a mob and she was put into the Tihar Jail. But, she got released after investigation and the real culprit was arrested.

#### **Sahara India Real Estate Corporation Ltd. vs. SEBI**

In this case there was an unauthorized leak of privileged communication related to the settlement proposal exchanged between the lawyers on two sides by a private television channel. The Supreme Court of India passed an order saying that "We are distressed to note that even without prejudice proposals sent by the learned counsel for the appellants to the learned counsel for SEBI has come on one of the television channels, such reporting by television channels not only affects the business sentiments but also it interferes with the administration of justice"

#### **Sushant Singh Rajput death Case**

The Bombay high court pointed out to the fact that journalists today have lost their neutrality and the media has become polarized while hearing public interest litigations(PIL) against the media trial in the Sushant Singh Rajput death case. In this case media change the image of Rhea Chakraborty in the eyes of her fans drastically before her guilt to be proved.

The chief justice made an observation on the submissions of Lohia and said, "We are ruled by the rule of law. In India there is a rule of law, right? How do you advocate that people who go around accusing others can find shelter of freedom of press? Journalists back then were responsible and neutral, now the media is polarized."

From the above cases it can be derived that the Media trial has become an acute problem with the ever expanding role of media. The phenomenal growth in technology, electronic media, extensive media coverage and opening up of too many media channels in all medium ensures quick flow of information, trial by media has the impact on a person's reputation by creating widespread perception of guilt regardless of verdict in court of law through the newspaper and television coverage. In fact, even if the person is acquitted by the court, then it becomes impossible for the accused to clear his reflection.

Now the main questions arises that is media involvement should be restricted or not in judicial proceedings? The answer depends on the reliability, unbiasedness, honesty and dedication of media towards the truth. If there is corruption in judiciary system then we can't ensure that the media is spotless.

The First Prime Minister of India Pt. Jawaharlal Nehru by favoring free press said,

"I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press."

Freedom of media in today's world is perceived as the freedom of the People. But a free press does not always guarantee of verified information and transparent system for a democratic society. Its motive is not at all doubt-free. It is emerging as a powerful entity that is manipulating and building the public opinion without questioning its authenticity. It has become puppet in the hands of influential people for money and uses to focus many unlawful practices. The media industry try its level best to attract more audience and readers without doing efforts to unearth the reality and use many innovative techniques for sensationalisation of news, may be very damaging.

Media become a threat to judiciary. Media and judiciary discharges public duties and should continue to enjoy the independence and freedom to act without any external threats or interference. Judicial independence is very vital in the society, but there are many examples when media entered in the jurisdiction of judiciary and interfered with its work. Even it pre-judice the case before the investigation undertaken by court which is impairing administration of justice and having a prejudicial impact on right of fair trial. It puts a burden on a court trial which has a constitutional duty to minimize the effects of prejudicial publicity. The work of media is only to report any issue, and not to act as a judge and pass a judgment on that issue.

Indian media is not free from bias. The law is governed by the senses and not by emotions. The fact cannot be overlooked that the media is motivated by emotions of the public. It takes an emotional stand and not a fair and just one. It was found that the facts narrated was one-sided which might be used in the forthcoming trial prejudicing the fair trial procedure presiding over the case. Judge is supposed to be influenced or confused.

The darker side, is that now media comments on the judgment given or the proceedings of the case etc, it will be amounting to contempt of court and defamation. Ideologically, too, it would be an unethical practice and to carry out such trials by media hampers the credibility of judges. The constitution doesn't allow it to opine or remark on a verdict.

To improve the working of both the following points may be considered:

Judiciary system needs;

1. Instigating the urge of loyalty and accountability of the persons related to judicial system
2. A strong Monitoring Procedure with strong monitoring committee

3. Increasing the number of Judges
4. Fixation of time for disposal of case
5. Regular training (between fixed intervals) to the members related to the judicial system
6. Monitoring on strict implementation and execution of law in proper way
7. Alternative dispute Redressed System

Media trial is also an appreciable effort, to start a revolution. But, the revolution cannot overlook the welfare of the society. It should be coupled with :

1. Enhanced quality of general education
2. Improve journalism education in the country
3. Self-regulatory mechanism internal to the media
4. Use of freedom with responsibility
5. Journalists should be given proper training on media law, Indian Constitution, human rights etc.
6. Media literacy movement should be started
7. It should respect the right of privacy of the accused
8. It should not interfere in the right to get fair trial of the accused
9. It should verify the information before publishing it without any bias
10. It should report honestly and on the basis of national principles.

In spite, of all these a separate law is required in India to control media from unduly interference with the administration of justice under the pretext of media trial.

#### **Aim of the Study**

The aim of this paper is to analyze the role of media involvement as complementary or competitive in establishment and administration of the justice in the society by investigating the history of media trials in India.

#### **Conclusion**

Freedom of speech and expression is an indispensable right in the democracy. Media by virtue of this right and do the exercise for the betterment of the society. The judiciary system may have many flaws. The failure of judiciary was not because of judicial lethargy, but due to several extraneous factors. The media should help to remove the flaws. Instead of doing this it started playing the role of investigator and to unearth hidden facts and evidences in the cases, which is the work assigned to judiciary by constitution. But ethics cannot be above the law. So, media should not cross its limits at the time of public trials. Media should understand the fact that whatever it publishes has a great impact over the people due to their immense faith in it. Therefore, it is the moral duty and responsibility of media to show the truth and at the right time. The trustworthiness of

news media rests on unbiased and objective reporting. It is in the media's interest to ensure that the administration of justice is not undermined. It should emphasize the truth and should help the court to project the right verdict for right justice. Along with the strong and proper support from the judiciary system, media can do a lot for the deprived society.

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