

*Original Article*

# Judiciary and Media Trial: A Need for Balance and Public Policy Overview

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<p><b>Author Affiliation</b>  <sup>1</sup>Research Scholar, Faculty of Laws, Panjab University, Chandigarh, 160014, India.</p> <p><b>Corresponding Author</b>  <b>Dheeraj Arora</b>, Research Scholar, Faculty of Laws, Panjab University, Chandigarh 160014, India  <b>E-mail:</b> dheerajiarora@gmail.com</p>	<p><b>Abstract</b></p> <p>We in India hang the person first and then try him. It is widely recognized that role of media in a democratic society is to provide transparency and accountability, and to increase the public alertness and further to facilitate a forum for public discussion. Nowadays media is performing a pro-active role in every field including the judicial process but the larger analysis reveals that by and large the role of media is not positive. The paper would discuss the tortious interference of the media trial in the investigation process and well as during trials. It would explore the need for a balanced approach so that domain of the media, police and judiciary should not cross each other, rather supplement each other. The paper would also explore the influence of news media on criminal justice policy and strengthen support for punitive public policies.</p> <p><b>Keywords:</b> Media trial; Judiciary; Criminal justice policy; Judicial process; Public Policies; Tortious interference; Balanced approach.</p>
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**Introduction**

Media Trial<sup>1</sup> is an expression used to describe the influence of print, radio, cable television network, broadcast, world wide web and electronic media coverage on the reputation of arrested person by generating an extensive awareness of guilt or innocence before, or after, a decision in a court of law. To articulate and express criminal justice system, it is important to understand the connection between crime and awareness of news media.<sup>2</sup> Media plays a vital role in public policymaking<sup>3</sup> and the media coverage of crime aids to set the outline/agenda and strengthen support for disciplinary, penal and punitive policies.<sup>4</sup>

Recent example is the media coverage of repetitive incidents of sexual assaults on children of all ages, including infants, which led to suo motu initiative by Hon'ble Chief Justice of India Ranjan

Gogoi on 01.07.2019 to frame a zero-tolerance policy towards child rape and sharpen the deterrence of the law enforcing machinery.<sup>5</sup>

**Role of media in criminal justice system**

The responsibility and accountability of media to confirm reports and leaks about individuals being tried in the Court of law have come under a big scanner and it is expected from the journalists to observe and follow advanced standards.<sup>6</sup> Media is accused of conducting the trial by reporting the comments from lawyers which prejudices public opinion.<sup>7</sup> Nowadays media is performing a pro-active role in every field including the judicial process but the larger analysis reveals that by and large the role of media is not positive. With the sole intention to increase their capital/TRP (Television Rating Point),<sup>8</sup> they make the issue complex and

sensational, without verifying the factual details, assuming the role of a trained investigator (which admittedly media is not), thereby tarnishing the reputation of arrested person,<sup>9</sup> who under Indian criminal jurisprudence enjoys presumption of innocence till his guilt is proved beyond reasonable doubt.<sup>10</sup> At the same time, the media coverage disturbs the mind of the investigator as well as the Judge by polluting his thought process.<sup>11</sup> After seeing the media reports, the investigator subconsciously toes the lines of media and refrains from conducting an impartial investigation, thereby causing serious prejudice to the rights of the arrested person.<sup>12</sup>

### Media trial pollutes the mind of the Court

At this stage, it would not be out of place to mention about the comments of Hon'ble Mr. Justice Kurian Joseph of Supreme Court of India<sup>13</sup>. Quoting pressure on the judiciary during the Nirbhaya rape case, Hon'ble Judge had remarked that Media Trials in pending cases should be avoided which will save Judges from the ignominy and enormous strain generated by it.<sup>14</sup> Let me take this opportunity to mention his words verbatim:

*"Please stop trying (cases) in the media till a case is over. Never try a case in the media, it creates a lot of pressure on judges, they are also human beings"*

Referring to "the extent of pressure that is put up," he recollected how a judge who dealt with the Nirbhaya case had once told him that "had he not given that punishment, they would have hung him." The Judge said "If I had not given that punishment they would have hung me, the media had already given their verdict, (like) it is going to be this only," according to Hon'ble Mr. Justice Kurian Joseph. He, however, added, "he (the Judge who went into Nirbhaya case) had reasons to give the punishment, not because the media said it, but because he had reasons". He said that the judge who dealt with the sensational case "was also making a casual remark that had it not been done, the people would have hung him because that was the type of pressure... (hence) never ever resort to media trial, you do it after the judgment is delivered."<sup>15</sup>

### Observations of Hon'ble the Supreme Court and different Hon'ble High Courts

The allegations contained in an FIR (First Information Report) are yet to pass the litmus test of judicial scrutiny.<sup>16</sup> There is no occasion with the

media to cross-examine the witnesses to separate chaff from the grain.<sup>17</sup> That can only be done by the trial Court after taking into consideration the evidence led by both the parties and the entire gamut of circumstances.<sup>18</sup> To illustrate, in a case<sup>19</sup>, the facts were that a woman had committed suicide in her parents' house in Calcutta but a case was filed by the parents of the woman projecting it to be a dowry death case against her husband and in-laws. The defence of the husband was that the deceased was a patient of schizophrenia and to prove this fact, the husband had filed a number of documents in Hon'ble the Supreme Court. The trial was yet to commence. Bail was refused to the accused by the Courts below. However, Hon'ble the Supreme Court was pleased to grant interim bail to the accused. While passing the final orders, Hon'ble the Supreme Court disapprovingly referred to certain news items published in Calcutta magazine. The Court castigated the approach of the Courts below in toeing the line of two articles published in the magazine in a one-sided manner taking into account only the version of the parents of the deceased without even a whisper about the documents filed by the accused to prove that the deceased was a schizophrenic. The observations of Hon'ble the Supreme Court<sup>20</sup> are noteworthy, which read:

*"These types of articles appearing in the media would certainly interfere with the course of administration of justice."*

The Court deprecated the articles and reprimanded the Publisher, Editor and Journalist who were responsible for the said articles against "indulging in such trial by Media when the issue is sub judice". It was further observed that all others should take note of the displeasure expressed by the Court.

On 01.03.2019, Indian Air Force (IA) Wing Commander Abhinandan Varthaman in a video message also criticized Indian media for negative coverage of the India-Pakistan tensions, narrating the entire episode of how he was caught after his MiG 21 jet was shot down by Pakistan Air Force (PAF) in violation of Pakistani airspace near Line of Control. Abhinandan, who remained in Pakistan's custody for a few days and was released through Wagah Border, said two soldiers of the Pakistan Army rescued him from the mob.<sup>21</sup>

Hon'ble Punjab High Court in *Rao Harnarain v. Gumori Ram*<sup>22</sup> held that,

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

Hon'ble the Supreme Court in *Harijai Singh v.*

Vijay Kumar<sup>23</sup> observed thus :

*“The press or journalists enjoy no special right of freedom of expression and the guarantee of this freedom was the same as available to every citizen. The press does not enjoy any special privilege or immunity from law.”*

In *Bijoyananda v. Bala Kush*<sup>24</sup> Hon'ble Orissa High Court made the following observations:

*“The responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of press should not degenerate into a licence to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons.”*

Hon'ble the Supreme Court in a landmark judgment passed in *Sidhartha Vashisht@ Manu Sharma v State (NCT of Delhi)*<sup>25</sup> popularly known as Jessica Lal murder case, through Chief Justice P. Sathasivam (as he then was), observed a note of caution to all modes of media to ensure fair investigation, trial, defence of accused and non-interference in the administration of justice in matters sub judice. In that case, the tortious interference of the media in the investigation process as well as during trials was heavily criticized. So, there is a need for a balanced approach so that domain of the media, police and judiciary should not cross each other, rather supplement each other.

To cap it all, it is to be noticed that the right to free speech in United States of America is absolute and no restraint order against publication is possible unless there is a clear and present danger to the right itself. But, the situation in India is different. The right to freedom of speech and expression<sup>26</sup> is not absolute in India as in United States of America but is conditional and restricted.<sup>27</sup>

### **Influence of Media on criminal justice system**

Criminal justice is the delivery of justice to those who have committed crimes as also to victims.<sup>28</sup> The criminal justice system is a series of government agencies and institutions like police, prosecution and defence lawyers, the courts and prisons, whose goals are to identify and catch unlawful individuals to inflict a form of punishment on them. Other goals include the rehabilitation of offenders, preventing other crimes, and moral as well as financial support for victims.<sup>29</sup>

It is settled position that the news media shapes social perceptions of the criminal justice

by moulding public opinion, and public policy.<sup>30</sup> Eamonn Carrabine<sup>31</sup> observes that the 24X7 round the clock news coverage of criminal issues contribute to the cultural climate of fear. In the process, media representations can negatively influence opinions on crime-related matters, and obstruct the implementation of crime prevention policies. ‘The representation of violent crime by the media leads to larger understanding of crime and justice that translates into public policies’<sup>32</sup> Crime prevention practitioners highlight the importance of prevention policies categorized by long-term action, and based on a solid analysis that takes into account the intricacies of the crime. The politicization of crime culminates into inaccurate perceptions on crime and inappropriate policy decisions, which results in futile crime control policies. Public attitudes towards crime and punishment play a pivotal role in constructing criminal justice policies.<sup>33</sup> Misconceptions of crime and punishment generated by the media create a lack of confidence in the Criminal Justice System. Consequently, the public demand harsher punishment for offenders.<sup>34</sup>

According to Hayward and Young<sup>35</sup>, the media and the public are always obsessed with crime. The crime news coverage ensures a ready audience and the progression of a public policy initiates with the acknowledgment that a difficulty exists. The pre-policy phases are three-fold:

1. Issues formation
2. Policy demands, and
3. Agenda formation

Social problems invariably involve problems which affect the real world. It also affects how people react to certain situations. Certain instances are anti-social behaviour, economic deprivation, poverty, drug abuse, alcohol abuse, prostitution, unemployment, sexual abuse including rape, early pregnancy and female genital mutilation. By entertaining people with coverage of crime by the media, newspapers sales figure upsurges, but ultimately it alters the public understanding of crime as a serious social problem<sup>36</sup>.

### **Law Commission Report**

The most calculated and exhaustive study on the positive and negative facets of media trial has been explained in 200<sup>th</sup> report of the Law Commission titled “Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)”. This report was submitted on 31.08.2006. Various amendments

have been suggested to address the harmful effects of exaggerated and dramatized news reports, and victimization of the suspect/accused by media, on the administration of justice. The Law Commission has recommended to prohibit publication of no matter what is prejudicial to the accused and a constraint that shall function from the time of arrest. It has also advocated that the High Court be vested with the power to direct postponement of publication or broadcast in criminal cases. The Commission has further clarified that at present, such publications are contempt only if a charge sheet had been filed in a criminal case.<sup>37</sup> After citing various case laws and authorities on the subject<sup>38</sup>, the Commission has proposed that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the legal opinion of the Commission the proposed amendment would keep a check on the media. The Law Commission has further suggested that the High Court should be empowered to postpone publication or broadcast relating to a criminal case by the print and electronic media and to restrain the media from resorting to such publication or telecast. In Chapter IX, the Law Commission has specified various codes of conduct by the media and journalists to curb the menace of interference in the administration of justice. The Law Commission has also recommended that journalists need to be trained incertain aspects of law relating to freedom of speech in Article 19(1) (a) and the restrictions which are permissible under Article 19(2) of the Constitution, human rights, law of defamation and contempt. It is further suggested that these subjects be included in the syllabus for journalism and special diploma or degree courses on journalism and law be started. Chapter IX *inter alia* includes; (1) Publications concerning the character of suspect; (2) Publication of Confessions; (3) Publications which have bearing upon the merits of the case; (4) Photographs related to the case which may interfere with the identification of the accused; (5) direct accusations on the innocence of the accused; (6) Building an atmosphere of bias and prejudice; (7) Condemnation of witnesses; (8) Premature and hasty publication of evidence; (9) Publication of discussions and interviews with witnesses.<sup>39</sup>

The Report is significant and is also exhaustive on the issues which today are crucial in our country so far as criminal justice is concerned. As of now, there is considerable interference with the due administration of criminal justice and this will have to be alleviated by Parliament. On the recommendations of the Law Commission,

Parliament is in the process of legislating an Act which will control the role of media in criminal investigations and trial.

### Clarification by Media

We have a rich and varied heritage of sovereign journalism. As a matter of fact all the big scams are reported by the media. The law enforcement agencies simply follow them up. If the media are free to write about government, they can report on the performance of government, and the general public can study information necessary to form opinions about the government. It is a safeguard against manipulation and mind control by the government and state controlled media.<sup>40</sup> It is one of the very cornerstones of social equality. Media freedom is essentially a limit on government power. If the media aren't free, then government has a significant power over individuals that it does not need to have.<sup>41</sup>

Agenda setting is a vital characteristic of the public policy process. Sudden, rare, and harmful events, known as focusing events, can be important influences on the policy process.<sup>42</sup> Such events can divulge current and possible future harms, mobilize general public and groups to address the policy failures that may be discovered by such events, and open the "window of opportunity" for exhaustive policy discussion and probable policy change.<sup>43</sup> Agenda-setting theory details the development and progression of what the public interprets and believes to have importance.<sup>44</sup> This development and progression include the creation of a story about a theme/topic that media then uses to inform the public about precise and detailed issues.<sup>45</sup>

The low paid press reporter/journalist must be accredited for bring to fore that material and information which looked unapproachable and inaccessible for the investigating agency/police. That is how Saradha Group Financial Scandal in West Bengal by Kunal Ghosh and others in 2013 and Punjab National Bank Scam by Nirav Modi worth ₹11,600 crore in 2018<sup>46</sup> smashed the headlines. The media made us proud at every stage. There is increasing and strong public focus on the huge pendency of Court cases. Whether reported in daily newspaper/print media or flashed in electronic media, people keenly consume this information, since they are interested in as to what is happening in the Courts. Now that the Courts have come under the media's scanner, they are likely to remain there forever. Both positive and negative imports have surged from the situation. Anoptimistic result

of changes spurred by the media and addressed by the Courts is that more and more people are becoming conscious of their rights than ever before. The media strongly feel aggrieved against the rule of sub judice and criticize that Courts during the course of a hearing tend to interpret the sub judice rule quite strictly to prohibit any debate or discussion of the issues before the Court even if they are engaging public attention. In their opinion such a restriction could be applied justifiably to situations where a jury of untrained and novice people are involved. The 8:1 acquittal of Kawas Nanavati<sup>47</sup> was overturned by higher courts on the grounds that the jury was misled by the presiding judge and were susceptible and vulnerable to media and public inspiration.<sup>48</sup> After the abolition of the jury system, when decisions are made by expert and skillful judges/Benches who are competent and trained not to be influenced by the activities outside the Court, there is least validation for a strict application of the so-called sub judice rule. Consequently, there is an emergent need to relax and liberalise the sub judice rule, applying it only in cases of an obvious intent to influence the trial and not as a general rule to all cases pending before the Courts which might have the remote likelihood of inducing or influencing the same.

### Findings

1. If the media frequently accuses people of crimes without producing any evidence against them with the sole aim to increase their TRP, they generate such certainty of their guilt in the minds of the public that, if these persons are even actually charged and tried, they have no hope of obtaining a fair trial. When such trials collapse, the victims of the crime are left without redress. Equally, the accused may be acquitted but eventually they have lost their good name. At times, it is seen that the suspect, whose image has been tarnished in public by the media reports, commits suicide. One of the slapping examples is Nirbhaya rape case where one of the suspects, namely, Ram Singh committed suicide in prison while the matter was sub judice<sup>49</sup>. Trial by media should be avoided especially at the time when the case is pending before the Court. Thus, it can be safely concluded that the role of media in criminal justice system is not overall positive.
2. Media trial pollutes the mind of the Court to such an extent that the Judge subconsciously

toes the line of media which causes serious prejudice to the rights of the accused. The stand taken by Media that rule of sub judice should be relaxed and used in rare cases, though looks impressive but does not cut much ice.

3. Media reports interfere with the administration of criminal justice. Hon'ble the Supreme Court has time and again also heavily criticized the tortious interference of the media in the investigation process as well as during trials. It will amount to mockery of justice if either of this causes disorders and impediments in the accepted prudent, judicious and fair investigation as well as trial.<sup>50</sup>
4. Certain articles and news items appearing in the newspapers immediately after the date of occurrence, do cause certain misperception in the mind of public as to the description and number of the actual assailants/suspects. The freedom of speech<sup>51</sup> has to be prudently and vigilantly used, so as to evade interference in the administration of justice and leading to objectionable results in the matters sub judice before the Courts.
5. By entertaining people with coverage of crime by the media, newspapers sales figure upsurges, but ultimately it alters the public understanding of crime as a serious social problem which strengthens support for punitive public policies.
6. Parliament is in the process of legislating an Act which will control the role of media in criminal investigation as also criminal trials.

### Conclusion and Suggestions

With the coming up of the television and cable-channels, the volume of publicity which any crime or suspect or accused gets in the media has reached alarming magnitudes. Innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved. There appears to be very little restraint in the media in so far as the administration of criminal justice is concerned.

Media must follow the virtues of 'accuracy, uprightness, morality, truth, impartiality, fair-mindedness, objectivity, balanced reporting, respect individuality of ordinary people'. But in reality, practical considerations viz., quest for a successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying

Media Managers by meeting progression targets, are accepted as factors for the 'temptation to print inconsequential stories scandalously presented'. Media gathers gossips and in the inducement to sell stories, what is offered is what 'public is interested in' rather than 'what is in public interest'.

Every endeavour should be made by the print and electronic media to ensure that the distinction between media trial and informative media should always be maintained. Journalists should be trained in certain aspects of law. Media Trial should be circumvented particularly, at a time when the accused is entitled to the constitutional safeguards. Invasion of his rights is bound to be held as improper and unacceptable. There is a greater need to strike a just balance between freedom of speech and expression of the media on the one hand and the due process rights of the suspect and accused on the other. Articles 19(1)(a), 19(2), 21 and 14 of the Constitution of India play a very crucial role in striking an even balance.

It is an irony that in India the cart is placed before the horse; Before giving opportunity of hearing to a person for trial, he is hanged.

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