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MEDIA AND JUDICIARY: NEED FOR BALANCE

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Abstract

Media and Judiciary act within the interface between person and also the government. Media, being the fourth estate of presidency impacts the standard of democracy in any state and asserts its role by strengthening and heightening the standard of democracy. The Indian judiciary, so as to uphold the main basic values enshrined within the Constitution, acts by stepping in when the Parliament and also the government do over citizen's rights. However, the main objective of this research paper is to cover the trial which is done by media in highlighting the negative and positive things in a particular case even before actual trial by the court of law. Also the paper cojointly aims at circulation of information by media as a close threat to the social order and as a full of life contributor to 'moral panics'. Trial by media is considered to be an intervention in the administration of justice. Though media comes under the perview of Freedom of speech and expression under Article 19 of the Indian constitution which is considered as a fundamental freedom. But there are some affordable restrictions given under Article 19(2) of the constitution through which media cannot go beyond the boundaries. So there must be a balance between the rights conferred on them. The author has also analysed the role of media in Indian democracy and differentiated between media trial and fair trial. Thereafter, it analyses some important judicial pronouncements keeping a check on the powers of bureaucrats and alternative body authorities. The last but not the least the various recommendations given by the law commission in its 200th Report in relation to adhere to the limits. Finally, in the last the author has discussed the pros and cons of the above raised issues as a concluding remark.

Keywords: Indian Media, Public Court, Indian Judiciary, Media Trial, Sub-judice, Freedom of speech and expression.

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Aim

The aim of the study is to analyze the relation between “trial by media” and the “Indian judiciary”.

Objectives

- To study the evolution of freedom of speech and expression with regard to media in India.
- To study the relationship of independent media and judiciary.
- To look into the role played by media in a democracy and its effect on judicial process.
- To examine the consequence of trial by media and its conflict with the fair trial.

Research Methodology

It is a doctrinal study employing descriptive, exploratory and comparative methods of research.

Introduction

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we were all going direct to Heaven, we were all going direct the other way”².

The judiciary and also the media, besides the civil society, are the most effective instruments to checkmate power. However the roles of these two establishments are complementary but ironically both have an adversarial role on their part. This paper enumerates the challenges exhibit by the functioning of media on the one hand, and judiciary, on the opposite, in an endeavor to showcase their role in a democratic society.

While the law-makers, the executive and also the judiciary are the known as the three pillars of the democracy, press remains the fourth estate. Media intrusion is an associate medium for the developing nations of the world. There is likely a full-grown up to be a trend that media act to analyze the reality. ‘Trial by media’ could be a phrase used in the late twentieth century and

² Charles Dickens, A Tale of Two Cities (Penguin Classics, UK, 2003)

early twenty first century to explain the impact of television and newspaper coverage on somebody's name by making a widespread perception of guilt or innocence before or after a finding during a court of law. On the other, the agony of the litigants is nearly not felt by anyone and that what says 'Justice delayed is justice denied'.

Therefore, the key concern is that the core issue of this work is to check detrimental impact caused by a sensational coverage of a sub-judice matter. To this point as far as criminal trial is concerned media coverage featured as negative influence instead of a positive impact. Thus, media can't be granted a blank check in court proceedings. The media needs to be properly regulated. Though our judiciary depends on the competency, disposition and fearlessness of the trial judge and one will argue for unrestrained media coverage of court proceedings on the bottom that it will not influence the judgment. Thus, in such a situation media needs to respect the balance between the 'freedom of press' and therefore the 'right to fair trial'.

Media Trial

When there is any kind of case which is sensitive in nature then in that sense it is to be tried in court of law, but on the other there is something curiosity among the people in urge of seeing sensational news through the medium of news channels. Thus, media here comes into picture in publishing its own facts while investigating the matter which is ultimately seem to be known as media trial or trial done by media.

Constitutional Status of Freedom of Media in India

Freedom of Speech and Expression as incorporated in Article 19 of the Indian Constitution is the most vital right that focuses on the facet of media to be able to perform it properly. Though it is one of the integral part of freedom of speech and expression inherited by the constitution. As we know that it is duty of media to respect the rights of individual, simultaneously media is also obliged to respect the legal principles and statutes as well. However this right of freedom of press is not absolute in nature, there are some reasonable restrictions that must be followed within the boundaries.

Article 19(2) of the Constitution imposes affordable restrictions on the exercise of the power bestowed within the interests of the sovereignty and integrity of India, the protection of the state,

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friendly relations with foreign states, public order, decency of morality or in regard to contempt of court, defamation or incitement to associate offense. Whenever emergency is said to arise in country, these rights stay suspended. All our governments have the most popular press freedom to be joined with social and basic responsibilities and therefore the obligation to report objectively.

In the case **Romesh Thapar v. State of Madras**³, in which the Supreme Court explained the difference between freedom of press and freedom of speech and expression by highlighting and stating that through freedom of expression an individual cannot communicate to a large extent on his own but on the other freedom of press can do so through the medium of various publications. So to spread information relating to any matter is a part and parcel which comes into the domain of freedom of press under the Indian Constitution.

Role of Media in Indian Democracy

Media is considered one among the pillars of democracy. The liberty of press is considered “the mother of all liberties during a democratic society”. Media has a wider role which helps in shaping the opinion of the society, however unlike other alternative liberty and freedom, the freedom of speech and expression is seen to be abused by the media. Each establishment is prone to be abused, and each liberty, if left unrestrained, has the tendency to become a license that might cause disorder and anarchy. As we have a tendency to analyze on the main issue that democracy depends on existence of freelance media and judiciary at the same time. What we discover perhaps can be true that a media is freelance of judiciary and at constant time judiciary is freelance of media still.

Fair Trial V. Trial by Media

Right to a Fair trial is an absolute right of each individual within the territorial limits of our country with respect to Article 14, Article 20, Article 21 and 22 of the Constitution. The provisions of Article 129 and Article 215 of Indian Constitution and Contempt of Courts Act, 1971 act as a safeguard for the protection of this right. However a fair trial is always guarded by the provisions of Code of Criminal procedure, 1973. Both the parties have a right to fair trial in

³1950 AIR 124, SCR 594

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all aspect. Being a fundamental right, right to fair trial cannot be denied. The judge has to be impartial in every case in order to keep rights of the parties secure, otherwise it would be a violation of fundamental right under article 21.

On the other, Trial by media creates a fanciful picture in the minds of public at large thereby holding the image of accused person as guilty then and there even before the fair trial which is to be held in court. Though our criminal justice system lies on the fact that accused is presumed as innocence, unless proven guilty. Therefore after seeing many instances it is very obvious that media is considered to be acted as self-proclaimed judges. However this leads to a negative impact to fair trial which imparts true justice. Trial by media has led to a great extent which prejudices the parties in a particular case and also have a great influence on the opinion of the court.

There are many instances where media intervened and covered a large number of cases simultaneously with due course of justice. In **Anukul Chandra Pradhan v. Union of India**⁴, the Supreme Court ascertained that “No occasion must arise so as to create an impression that the publicity connected to those matters has become dilute to the main characteristics of a fair trial and also the basic principles of jurisprudence together with the presumption of innocence of the defendant unless found guilty at the tip of the trial.” The trial by a press, electronic media or by means of public agitation is that the terribly anti-thesis of rule of law and might cause miscarriage of justice. The freedom of press is subordinate to administration of justice.

In the case of **ZahiraHabibullah Sheikh v. State of Gujarat**⁵, the Supreme Court explained the definition of fair trial that would mean a trial conducted by a judge who acts as impartial in a judicial atmosphere. It does not mean which is likely to prejudice the accused and witnesses and that would not be considered as fair trial.

In **Vijay Singhal and Ors. v. Govt of NCT of Delhi and Anr.**,⁶ the court held that the main objective of the trial is to give true justice and in case of any competition between the two rights

⁴ (1996) 6 SCC 354

⁵ (2004) 4 SCC 158

⁶ WP(C) 195/2013

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i.e freedom of speech and expression and fair trial then in that case right to fair trial would prevail.

Violation of Human Rights

The responsibility of the media is larger than the responsibility of a private as a result of that the media includes a larger audience. The liberty of press ought to neither degenerate into a license to attack litigants and shut the door of justice, nor will it embody any unrestricted liberty to break the name of respectable persons.

The infringed privacy and tainted name of bound persons has become inevitable by way of additional snooping done by media. Suspects and defendant apart even the victims and witnesses suffer from excessive packaging and invasion of privacy rights.

In the famous case of **Jessica Lal Murder case**⁷, wherever Manu Sharma was tried and held guilty for the offence of murder, the court here said that “There is danger of significant risk of prejudice if media exercises an unrestricted & unregulated freedom by publishing unrealistic images of the suspects or the defendant before the identification parades are actually recognized or if media publishes any statement that hold the suspect or defendant guilty even before such an order has been glided by the court.

In **Priyadarshini Mattoo case**⁸, a law student who was brutally raped and murdered and the judgment given by the court was hampered by the media trial. However in such situation it becomes necessary for the court to intervene into such matter.

In **Aarushi Talwar case**⁹, even before the actual trial to be conducted, the person was held guilty by the media. That means prior to this the press had immunity from such publication and there was no legislative interference so it was provided by the court that the trial by the media falls under the category of contempt of court.

The Law Commission 200th Report

⁷SidharthaVasisht v. State (NCT of Delhi), AIR 2010 SC 2352.

⁸Santosh Kumar Singh v. State through CBI, AIR 2010SCC747

⁹ State of U.P. through the CBI v. Rajesh Talwar & Another, AIR 2013 (82) ACC 303

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In stating the importance of connection between media and judiciary, the Law Commission of India mentioned that there is a constant conflict between the two for which it is important for each of the establishments to induce the balance right. The need for the court to keep up its authority on one hand and also the importance of the liberty of the press to treat in the matters of public interest on the other and for this reason they should be reconciled to keep up the balance between establishments. However various recommendations have been made in this regard by proposing amendments which would help the case in preventing from being affected. The area to be covered in a criminal case is that the accused shall come into the eyes of media only at the time of arrest and not at the time of filing of the chargesheet. Furthermore, it is the authority of high court to publish the case of criminal nature and to prevent media from such intervention and also prohibited from establishing anything which is affecting the reputation of the accused person.

Suggestions

Here are some suggestions made in reducing and preventing media trial in the administration of justice

- Certain changes can be made in the Contempt of Courts Act,1971 in order to prevent media from making publications which is likely to affect the Justice.
- There is certainly a need for amendment in the Press Council Act,1978 under which more powers can be granted to PCI (Press Council of India) in taking actions against the print media.
- Further, the acts deals with the concept of print media only but there is a constant need to make provision of electronic media in the act also.
- Before entering into the profession of journalism, one must adhere to the rules and regulations and also the restrictions of media laws thereby, creating a mindset from the very beginning of entering into this profession in case of any chaos which may happen later.

Conclusion

In the light of the above article, the fact that media and judiciary are equally important in the eyes of public as both are in urge to provide justice on their respective part. What matters the most is the sensational news which ought to be carried out through media and this hinders the

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reputation of the person in a particular case even before the actual trial by court of law. However media is that platform through which younger generation is more influenced and it also respects the rights of the individual as well and for the welfare of society. But the way media grows with its content leads to a negative impact rather than a positive one but only in few exceptional cases. Therefore, it must be understood that legislature has a wider responsibility in making of laws on media by ensuring that the freedom of press should not be suppressed by any other means. Though media has a right to comment on any case but no trial should be conducted in this regard on sub-judice matters. As one must understand that a fair trial is always an important concept as compared to freedom of press.

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