
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**A LEGAL STUDY OF ELECTRONIC MEDIA IN INDIA VIS-À-VIS
MEDIA TRIAL**- Harshita Kalra¹**ABSTRACT**

Media Trial or Trial by Media² is a phrase used to describe the negative impact of television and newspaper coverage of cases pending before court. Media often create an atmosphere of hysteria in sensational cases, beginning with commencement of investigation and carried on till trial. Often, details leaked by investigating agencies to media tend to affect the outcome of trial. By public hysteria, a fair trial with logical conclusion often invites public wrath if it is adverse to the perceptions created by media and media makers. In a country like India, mob mentality, independent of the media, is rare. It is not that all judges get carried away by outpouring of the media and spokesmen, but it puts them under pressure. Their verdict may, at times, be criticised insensibly if in contrast with observations of the media.

1. Introduction

Violation of constitutional and legislative provisions by media are described. In the constitutional provisions the importance and significant arrangements of freedom of speech are given in detail. It is implication of the article in the light of legal significance. Various legal and constitutional bodies used the provisions and media uses that during the trials. It is simply explain the intensive structure of the provisions.

Media Trial or Trial by Media³ is a phrase used to describe the negative impact of television and newspaper coverage of cases pending before court. Media often create an atmosphere of hysteria in sensational cases, beginning with commencement of

¹ Student at Amity University Noida

²Law Commission of India, 200th Report, On Trial By Media Free Speech and Fair Trial Under Criminal Procedure Code, 1973 August 2006

³Law Commission of India, 200th Report, On Trial By Media Free Speech and Fair Trial Under Criminal Procedure Code, 1973 August 2006

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

investigation and carried on till trial. Often, details leaked by investigating agencies to media tend to affect the outcome of trial. By public hysteria, a fair trial with logical conclusion often invites public wrath if it is adverse to the perceptions created by media and media makers. In a country like India, mob mentality, independent of the media, is rare. It is not that all judges get carried away by outpouring of the media and spokesmen, but it puts them under pressure. Their verdict may, at times, be criticised insensibly if in contrast with observations of the media.

M.P. Lohia v. State of West Bengal⁴ is one among many cases where the apex court came down heavily on media trial. It was held thus "Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interests of justice. The death of Chandhni took place on 28th February, 2002 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13.2.2004 and special leave petition was pending before this court. Even then, an article has appeared in a magazine called 'Saga' titled "Doomed by Dowry" written by one Kakoli Poddar based on her interview with the family of the deceased giving version of the tragedy and extensively quoting the father of the deceased as to his version in the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who was responsible for the said article against indulging in such trial by media when the issue is subjudice. However to prevent any further issue being raised in this regard, we treat the matter as closed, and hope that the other concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice."

The hope expressed by the apex court has not reached the media, especially those in Kerala. Investigative journalism is a very loose phrase, invariably clamoring for protection of right to expression and freedom of press. Very often, the media reports colourful accounts of so called eye witnesses and investigating officers. Its effect on trial is drastic. Quite often these accounts go against the prosecution version regarding the incident. If the

⁴M.P.Lohia v. State Of West Bengal & others on 4 February, 2005

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

verdict in unacceptable media and politicians unleash scathing attacks on the judge for deviation from their conclusions earlier accounts of witnesses are projected to justify their pre-trial conclusions Is this not naked intrusion into the administration of justice? Media has to understand that there is a system to deal with investigation and trial of cases. One can understand fair criticism of judgments by media, which is good for the system. But what is 'really happening is total deviation from that objective.

With ever increasing number of newspapers and visual media houses, competition is inevitable. Many criminal cases being focus of public attention, reliable news thereon will certainly Increase ratings of T.V. channels and newspapers. But the cause for concern is that this is now at risk to administration of justice. The directions of the Hon'ble Supreme Court in the matter have not been heeded. The media cannot become apostles of virtues overnight. We need a comprehensive law which regulates mediacoverage at least in criminal cases starting from the stage of investigation and ending before trial. The law should restrain Investigatory agencies from leaking information on mailers pending investigation. Case diary details are inaccessible even to defense lawyers. It should also curb parallel investigation by the media. Interviews of witnesses and publication thereof at any stage of criminal cases should be banned. Let the media expose inadequacies in investigation or trial, but it cannot work as a parallel agency entitled to grill out a convenient version of truth at the cost of damaging our competent judicial system.

The Law Commission of India, in its 200th report⁵ severely criticised the growing trend among Medias to interfere in the process of trial and thereby causing great prejudice to the accused. For the sake of brevity, I only quote a relevant portion:

"If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the administration of justice, calling for proceedings for contempt of court against the media. Other issues about the privacy rights of individuals or defendants may also arise. Public figures, with slender rights against defamation are more in danger and more vulnerable in the hands of the media."

⁵Law commission of India 200 th report on trial by media free speech and fair trial under criminal procedure code, 1973 august 2006

In the interest of the system, it is not possible or desirable to invoke contempt jurisdiction in every case of media excess. Whether it is legislation or contempt of court proceedings, there should be a curb on this dangerous trend which is now assuming alarming proportions. It is high time that those interested in free trial stand up and fight this grave injustice.

2. Constitutional Provisions of Media Trial

The world of journalism is like the fun house of mirrors that one finds in carnivals. In one reflection you are too fat; in another you are absurdly thin; in another reflection you appear to have an elongated neck; in another, a flat head,- in still another you have next to nobody. Yet there you are, standing in front of these bizarre reflections, fully formed and hearing little resemblance to any of the images before you. The difference is, however, that unlike the fun house of mirrors, the distortions of the media are rarely a joke⁶.

With the case of Sheena Bohra murder, the excruciating eyes of the media have pierced the personal life of the main accused Indrani Mukherjee which has kicked in a fresh debate on the issue of media trial of the accused. Every aspect of her personal life and character which have nothing to do legally with the investigation of the murder are under public lens of scrutiny via the media. The ethics of journalism have been again in a controversial area due to their prying eyes on the accused.

The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Especially in the last two decades, the advent of cable television, local radio networks and the internet has greatly enhanced the reach and impact of the mass media. The circulation of newspapers and magazines in English as well as the various vernacular languages has also been continuously growing in our country. This ever-expanding readership and viewership coupled with the use of modern technologies for newsgathering has given media organizations an unprecedented role in shaping popular opinions. However, media freedom also entails a certain degree of responsibility⁷

The strength and importance of media in a democracy is well recognized. Article 19(1) (a) of the Indian Constitution, which gives freedom of speech and expression includes within

⁶Trial by Media and Trial of Media <http://www.rtrd.nic.in/MassMediaIndia2009.pdf> (last visited on April 2023)

⁷<http://www.civilservicestimes.co.in/editorial/-current-national-issues/416-trial-by-media-looking-beyond-the-pale-of-legality-.html> (last visited on April 2023)

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India. Media is not only a medium to express one's feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions. The increased role of the media in today's globalized and tech-savvy world was aptly put in the words of Justice Learned Hand of the United States Supreme Court when he said, "The hand that rules the press, the radio, the screen and the far spread magazine, rules the country"⁸.

Democracy is the rule of the people, a system which has three strong pillars. But as Indian society today has become somewhat unstable on its 3 legs- the executive, the legislature and the judiciary, the guarantee of Article 19 (1)(a) has given rise to a fourth pillar known as media or press. It plays the vital role of a conscious keeper, a watchdog of the functionaries of society and attempts to attend to the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and taken suo-moto cognizance of the matters in various cases after relying on their reports and news highlighting grave violations of human rights.

However, there are always two sides of a coin. With this increased role and importance attached to the media, the need for its accountability and professionalism in reportage cannot be emphasized enough. In a civil society no right to freedom, howsoever invaluable it might be, can be considered absolute, unlimited, or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the Constitution has to be exercised within reasonable boundaries. With great power comes great responsibility. Similarly, the freedom under Article 19(1) (a) is correlative with the duty not to violate any law.

In an increasingly competitive market for grabbing the attention of viewers and readers, media reports often turn to distortion of facts and sensationalisation. The pursuit of

⁸Right to Privacy in Sting Operations of Media <http://odisha.gov.in/e-magazine/Orissareview/2013/may/engpdf/57-61.pdf>

commercial interests also motivates the use of intrusive news gathering practices which tend to impede the privacy of the people who are the subject of such coverage. The problem finds its worst manifestation when the media extensively covers sub-judice matters by publishing information and opinions that are clearly prejudicial to the interests of the parties involved in litigation pending before the Courts.

However, sensationalised news stories circulated by the media have steadily gnawed at the guarantees of a right to a fair trial and posed a grave threat to the presumption of innocence. What is more, the pervasive influence of the press is increasingly proving to be detrimental to the impartial decision making process of the judiciary. Such news stories cannot easily be defended under the auspices of freedom of expression.

Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. This is the threshold on which we are standing today. Television channels in a bid to increase their Television RatingPoint (TRP) ratings are resorting to sensationalized journalism with a view to earn a competitive edge over the others.

In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. Some famous criminal cases that would have gone unpunished but for the intervention of media, are Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case and Bijal Joshi rape case. The media however drew flak in the reporting of murder of Aarushi Talwar, when it preempted the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder, the CBI later declared that Rajesh was not the killer.

This phenomenon is popularly called as media trial or Trial by Media it is the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. There is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and right to a fair trial. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only make a fair trial nearly impossible but means

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

that regardless of the result of the trial the accused persons will not be able to live the rest of their life without intense public scrutiny. The counter-argument is that the mob mentality exists independently of the media which merely voices the opinions which the public already has. There are different reasons why the media attention is particularly intense surrounding a legal case:

the first is that the crime itself is in some way sensational, by being horrific or involving children; the second is that it involves a celebrity either as victim or accused. Although a recently coined phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much beyond. This is not including the use of a state controlled press to criminalize political opponents, but in its commonly understood meaning covers all occasions where the reputation of a person has been drastically affected by ostensibly non-political publications. The problem is more visible when the matters involve big names and celebrities. In such cases media reporting can swing popular sentiments either way¹³⁰.

The practice which has become more of a daily occurrence now is that of media trials. Something which was started to show to the public at large the truth about cases has now become a practice interfering dangerously with the justice delivery system. And it highlights the enormous need of what is called 'responsible journalism'¹³¹.

A History of Media Trials

Although a recently coined phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much further. This is not including the use of a state controlled press to criminalize political opponents, but in its commonly understood meaning covers all occasions where the reputation of a person has been drastically affected by ostensibly non-political publications.

20th century

One of the first celebrities in the 20th century to be arguably trial by media was Roscoe 'Fatty' (Borish Paul : 2008)⁹ Arbuckle who was acquitted by the courts but nevertheless lost his career and reputation due to the media coverage.

Parallels can be drawn between these cases and the trial of O.J. Simpson. The connection is less about guilt or innocence but about the promotion of the media coverage in the public mind above the status of the court.

Another interesting case in the US was the Rodney King incident and subsequent trial of the police officers involved. Once again an acquittal is challenged by the media reporting with violent consequences. What makes this case particularly important historically is the fact that it was amateur video footage which provided the key evidence of perceived guilt. As video cameras and their digital successors and CCTV become wider spread, this type of 'caught on camera' incident become more and more common. This can pose real problems for the legal system as the evidence they provide may be inadmissible for technical reasons (e.g. not being able to pinpoint exact times) but they give very strong images for the media (and public) to seize upon and the potential to manipulate by editing.

Even where a criminal court finds somebody guilty the media can still appear to sit in judgement over their sentence. Examples include Myra Hindley¹³⁴ whose proposed release from prison after thirty years was widely condemned by the British press (the argument became moot when she died in 2002); Maxine Carr who, having served her sentence, has been released and is, according to some commentators being "demonised by the press". One case popularized by the media between 1980 and 1982 was the murder trial of Lindy Chamberlain¹³⁵ in Australia who was, but later released in 1986 on new evidence showing that a dingo had in fact committed the act as was originally claimed by Chamberlain. The motion picture *A Cry in the Dark* depicted Chamberlain, as played by actress Meryl Streep, caught in a "trial by media" which fed the public's, and subsequently the jury's false conviction of her.

Often the coverage in the press can be said to reflect the views of the person in the street. However, more credibility is generally given to printed material than 'water cooler gossip'. The responsibility of the press to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher

⁹Borish Paul, Trial By Media, 2008.

standards. There was much debate over U.S President Bill Clinton's impeachment trial and prosecutor Kenneth Starr's investigation and how the media handled the trial by reporting commentary from lawyers which influenced public opinion. Another example was the investigation into biologist Steven Hatfill allegedly sending anthrax through the U.S. mail as a terrorist attack, which resulted in no conviction, but Hatfill went on to sue as his reputation was severely tarnished and career destroyed.

Families and friends of persons convicted of crimes have apparently successfully used the power of the media to reopen cases, such as the Stephen Downing case in Derbyshire where a campaign by a local newspaper editor resulted in a successful appeal and his release after twenty seven years in prison.

3. Legislative Provisions of Media Trial

Here are some legislative provisions of Media Trial, which is described here.

1. The freedom of speech and expression has been characterised as “the very life of civil liberty” in the Constituent Assembly Debates. The freedom of the press, while not recognised as a separate freedom under Fundamental Rights, is folded into the freedom of speech and expression.¹³⁸The Supreme Court has described this freedom as the “ark of the covenant of democracy”.¹⁰

2. The freedom of the press serves the larger purpose of the right of the people to be informed of a broad spectrum of facts, views and opinions. It is the medium through which people gain access to new information and ideas, an essential component of a functioning democracy. Thus, “The survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press.”

2.1 The media is vital in the role it plays in uncovering the truth and rousing public opinion, especially in the face of wrongdoing and corruption. Numerous examples exist where the media has played a central role in revealing corrupt practices and shaping the demand for accountability and good governance.

2.2 The importance of media in a democracy becomes particularly evident when it comes to challenges surrounding media and the elections. The Law Commission, while

¹⁰Bennett Coleman & Co. v. Union of India, AIR 1973 SC 106.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

considering issues related to electoral reforms, increasingly felt the need to address media-related issues connected to elections, such as the phenomenon of paid news and opinion polls. However issues relating to the media are not solely limited to elections. Thus this Consultation Paper puts forward several wide-ranging issues relating to the media generally to elicit responses thereon.

2.3 In India today, we have every reason to celebrate our news media. However, as society evolves, new challenges are constantly thrown up that require consideration. Technology has expanded our horizons, but also brought with it new concerns. Recent events related to the news media, such as the proliferation and subsequent curbing of social media, the paid news phenomenon, fake sting operations, trial by media, breach of privacy, etc. pose a set of anxieties. As Lord Justice Leveson wrote in his path-breaking report on ‘Culture, Practice and Ethics of the Press’ in Great Britain,

“With these rights (of press freedoms) come responsibilities to the public interest: to respect the truth, to obey the law and to uphold the rights and liberties of individuals.”¹⁴¹

2.4 To this end, the Consultation Paper raises some select concerns, and poses a set of questions that will help foster a larger public debate amongst stakeholders and the citizenry to shape the approach which should be adopted in tackling these issues.

2.5 There have been a number of reports on specific issues related to media regulations, authored by various government and self-regulatory entities. The following is a snapshot of the content of the reports published so far.

3. One of the main issues with regard to media regulation has been the question of the nature of regulatory authorities. This has led to proposals for a Broadcasting Regulatory Authority of India. In 2007, a Consultation Paper by the Ministry of Information and Broadcasting sought views from stakeholders on the proposed draft of the Broadcasting Services Regulation Bill. The proposed draft of the Bill is available on the website of the Ministry of Information and Broadcasting. The PCI, in 2012 also recommended that electronic and social media be brought within its regulatory framework and the institution renamed Media Council.

3.1 Similar concerns have been voiced and addressed in other jurisdictions, most notably in the United Kingdom where, following a series of media scandals, a committee headed

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

by Lord Justice Brian Leveson was set up to inquire the 'culture, practice and ethics' of the press, including the media's relations with politicians and the police. The report recommended a strong and independent regulator be set up to replace the existing Press Complaints Commission.

3.2 Whether media accountability is better served by such self-regulatory institutions which are diverse and widely viewed as lacking powers of enforcement or replaced by statutory regulations enforced by one or multiple regulators has been a vexed question in recent debates surrounding media reform. Even for social media which currently does not have a dedicated regulator, the key question is whether to regulate and if so, which model of regulatory institution to adopt.

3.2 (a) In this context, the following questions arise:

3.2 (b) Do the existing self-regulation mechanisms require strengthening? If so, how can they be strengthened?

3.2 (c) In the alternative should a statutory regulator be contemplated? If so, how can the independence of such regulator be guaranteed? Specifically:

- a. How should members of such regulator be appointed?
- b. What should the eligibility conditions of such members be?
- c. What should their terms of service be?
- d. How should they be removed?
- e. What should their powers be?
- f. What consequences will ensue if their decisions are not complied with?

3.2 (d) should any such change be uniform across all types of media or should regulators be medium-specific?

3.a Paid News

1. Paid news, defined by the Press Council of India as "any news or analysis appearing in any media (print and electronic) for a price in cash or kind as consideration" is now a

common occurrence that poses a serious threat to democratic processes and financial markets. It misinforms audiences and undermines their freedom of choice.

2. The issue was extensively dealt with by the Press Council's sub-committee report on 'Paid News' in 2009. The report talked about the way in which the illegal practice has become organised, with 'rates' for the publication of 'news items'.¹¹ Further, the Parliamentary Standing Committee on Information Technology, in 2013, has brought out its forty-seventh report on the phenomenon of paid news, where it has highlighted the 'dangerous trend' of presenting paid-for information as news, that has spread at 'remarkable pace' in some parts of the media.¹² The Report also outlined the practice of 'Private Treaties', where a non-media company transfers shares to a media company in exchange for advertisements, space and favorable coverage.

3. Guidelines are present both in print and broadcast media that call for clear demarcation of advertisement and news content. These take the shape of norms under the Press Council of India Act, and the Programme and Advertisement Codes under the Cable Television Networks (Regulation) Act. However, these guidelines are either subverted or ignored altogether.

4. Particularly with respect to elections, Section 127A of the Representation of People Act, 1951 make it mandatory for the publisher of an election advertisement, pamphlet or other document to print the name and address of the publisher as well as the printer. However, paid news is not expressly defined or included as an electoral offence.

5. To curb paid news, the Election Commission has constituted District level Committees to scrutinise newspapers for such items. Given the state of the current law, however, the Commission can only issue notices to show cause why paid news expenditure should not be included in a candidate's election accounts. Complaints are also forwarded to the PCI and NBA for necessary action. However, it has been admitted by the concerned bodies that enforcement mechanisms currently lack teeth and are insufficient to meet the challenge.

¹¹Press Council of India, Sub-committee Report on Paid News, <<http://presscouncil.nic.in/OldWebsite/Sub-CommitteeReport.pdf>>

¹²Standing Committee on Information Technology, 15th Lok Sabha, 47th Report on 'Issues related to paid news',

6. In this context, the following questions arise for consideration:

1. Should paid news be included as an election offence under the Representation of the People Act, 1951? How should it be defined?
2. What enforcement mechanisms should be put in place to monitor and restrict the proliferation of paid news?

3.b Opinion Polls

1. Opinion polls conducted by polling agencies and disseminated widely by television channels and newspapers are an endemic feature of elections in India today. Several concerns have been raised about such polls, including bias in choosing sample sizes, the possibility of them being manipulated to favour particular political parties and the inordinate influence that they exercise on voters' minds especially in multi-phase elections, under the guise of an objective study. Equally, constitutional concerns have been raised about banning such polls. In an opinion on 8th April, 2004, Soli Sorabjee, Attorney General of India (as he then was) opined that banning opinion (and exit) polls would be violative of Article 19(1)(a) of the Constitution, specifically the public's right to know, which has been held by the Supreme Court to be part of the freedom of speech

3.c Cross Media Ownership

1. Monopolies in the field of media ownership have a severely negative impact on the quality of media freedom and plurality in the country, specifically with respect to news coverage. Issues related to ownership of media entities have been raised repeatedly in the last few years by both private observers and government bodies. The overarching concern is that media ownership does not receive sufficient public scrutiny and is under-regulated.

2. On the other hand, hastily imposed regulations in this space could infringe on the freedom of the media, and pave the way towards unwarranted state control. Any regulation on vertical integration, which connotes ownership of both broadcast and distribution, and on horizontal integration, that takes the shape of cross-media holdings, must balance these two competing considerations.

3. A further issue requiring attention is the consolidation of market share by a single media entity in a given geography. Studies have shown that there are clear examples of

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

market dominance by media entities, making it necessary to address the question of regulation.

4. At this point of time, there are no cross media ownership restrictions across print, television and radio in the country. Some restrictions on vertical integration are in place in the shape of guidelines for obtaining Direct-to-Home platforms. Restrictions also exist on the number of licenses allowed to FM radio operators in a given area. Apart from these specific laws, the general competition law in India applies to the media sector.

5. Media ownership issues have been raised repeatedly by the Telecom Regulatory Authority of India, the Ministry of Information and Broadcasting and the Parliamentary Standing Committee on Information Technology, among others. The call has been for the introduction of regulations in this area, but no such steps have yet been taken.

6. In this context, the following questions arise for consideration:

1. Is there a current need for restrictions on cross control/ownership across the media sector? If so, what shape should such restrictions take?
2. Are mergers and acquisitions guidelines necessary for the sector to regulate concentration of media ownership? If so, what are the key factors such regulations must capture?
3. Do mandatory disclosure norms need to be imposed on media entities?
4. Should certain categories of entities be restricted from entering into broadcasting activities?

3.d Media and Individual Privacy

1. The exponential growth of media, particularly electronic media, has resulted in a corresponding decline in an individual's privacy. The right to privacy, not specifically enshrined in the Constitution of India, has been held to be implicit in Article 21. Though the freedom of speech and expression, as guaranteed in the Constitution of India, empower the press to disclose information vital to public interest, it often results in intrusion of privacy. In 2012, a news channel aired the molestation of a girl in Guwahati, filmed by

one of its reporters. In several instances, sting operations have been used as a medium to exact retribution or have sought to expose information within the realm of an individual's private domain having no bearing on public interest. In 2008, the Delhi High Court took *suomotu* cognizance of a manipulated sting operation on a schoolteacher resulting in her suspension and assault by a mob and directed the government to consider adopting guidelines for sting operations.

2. At present, the NBA has principles of self-regulation and a code of ethics¹³. The regulations also provide for a complaint mechanism to the NBSA. Recently, the News Broadcasting Standards Authority imposed a fine of Rs. 1 Lac on a television channel for broadcasting truncated footage of an incident involving young college students alleged to be drunk, observing that there was no verification of facts. The Authority observed that there was no impartiality or objectivity in reporting the incident and that the broadcast intruded into the privacy of the students. The channel was also directed to air an apology for three days expressing regret over the telecast. Since the NBSA is not a statutory body, the scope of its regulation is limited as being restricted only to members. In 2009, a news channel withdrew its membership after being fined for violating guidelines.

3. Additionally, EMMC under the I&B Ministry has a set of self-regulatory guidelines for broadcast service providers including guidelines that channels should refrain from using material related to a person's private affairs unless there is an identifiable larger public interest. The Content Certification Rules 2008 under the Cable Television Networks (Regulation) Act define "identifiable larger public interest" to include revealing or detecting crime or disreputable behaviour; protecting public health or safety, exposing misleading claims made by individuals or organizations or disclosing significant incompetence in public office for the larger public interest. Despite the presence of such norms, sting operations invading personal privacy by the media is a fairly common occurrence. The Right to Privacy Bill, drafted as a possible antidote, is yet to be introduced.

4. In this context, the following questions arise for consideration:

¹³Consultation Paper On Media Law, Law Commission Of India, Government of India, 2014.

1. Should a statutory body have powers to adjudicate complaints of false sting operations? Should there be a specific statutory provision for treating false sting operations as a punishable offence?
2. Should the existing framework of laws be suitably amended to include specific guidelines governing disclosure of private information by the press?
3. Is there a need for detailed guidelines on reporting of *sub judice* matters?
4. Is the current definition of “Identifiable larger public interest” under the Cable TV Networks (Regulation) Act, 1995 comprehensive?

3.e Trial by Media and Rights of the Accused

1. There is a widespread view that the difference between an accused and a convict and the basic underlying principle of ‘innocent until proven guilty’ are regularly overlooked by sections of the media in its coverage of ongoing trials. By conducting parallel trials, the media, it is felt, not only puts undue pressure on the judge but also creates pressure on lawyers to not take up cases of accused. Further once a matter comes under intense media glare, there is an added pressure on the prosecution to secure evidence which must incriminate an accused, lest the media build negative public opinion against the prosecution. A fair trial and investigation, which are foremost constitutional guarantees, are as much a right of the accused as they are of the victim.
2. The exponential growth and reach of media has shown unhealthy trends of competition, leading to sensationalised reporting giving the well-established rule of *sub-judice* a go-by. While this is certainly not true across the board to all media publications, the problem is certainly extensive. Some form of restriction on such media trials has been suggested so as to preserve the administration of justice as also to protect privacy of individual.
3. In response, the Supreme Court in *Sahara India Real Estate Corporation v. Securities and Exchange Board of India*,¹⁴ gave judges the power to order postponement of

¹⁴Sahara India Real Estate Corporation v. Securities and Exchange Board of India, (2012) 10 SCC 603.

publication on a case-by- case basis, the test being, ‘where there is a real and substantial risk of prejudice to fairness of the trial or to proper administration of justice’. However, this is a very general test which does not clarify what publications would fall within this category, leaving it entirely contingent on the content and context of the offending publication. This leaves the higher judiciary with wide discretionary powers to decide what amounts to legitimate restraints on media reporting. Due to the possibility of such subjective interpretation, postponement orders could be used by influential parties as a tool to abuse the process of law. Therefore, the jurisprudence of postponement might be transported into defamations suits, when the application of such order should be sought strictly as a constitutional remedy.

4. In this context, the following questions arise for consideration:

1. What form of regulation, if at all, is required to restrict media reporting of *sub-judice* matters?
2. Should the application of postponement orders be narrowed down by introducing guidelines/parameters such as kinds of publications to be covered, categories of proceedings which may be covered?
3. If some form of media regulation is required in reporting of matters which are *sub-judice*, should the same be in the form of a self-regulated media or should the Courts apply the present law of contempt to check such prejudicial publications?

3.f Defamation

1. The issue of defamation vis-à-vis the news media requires careful consideration. On the one hand, instances of fake sting operations or trial by media give credence to allegations of irresponsible journalism. On the other, threats of legal action with punitive damages under the laws of defamation lead to a ‘chilling effect’ on the publication of free and independent news articles and puts undue pressure on journalists and publishing houses. Any change to the laws on defamation in India must balance these two considerations.

2. Currently, civil defamation is dealt with under the law of torts whereas criminal defamation is an offence under Section 499 of the Indian Penal Code. A journalist has no special status under defamation laws in India. Although the press enjoys the freedom of speech and expression under Art. 19(1)(a) of the Constitution, defamation is a ground for a reasonable restriction to this freedom under Art. 19(2).

3. Demands have been made in the past by entities such as the Editors' Guild of India, to decriminalise defamation as it pertains to journalists. The proposal has been noted by the Law Ministry as well. In 2003, the newspaper The Hindu mounted an unsuccessful challenge in the Supreme Court against the use of the criminal code for defamation, on the ground that it violates the press freedom guaranteed by the Constitution. Therefore, a comprehensive review of laws regulating the media must consider the question of defamation laws as well.

4. To that end, the following question arises for consideration:

1. Should there be modifications in the law of civil and criminal defamation as it applies to journalists? If so, what should these modifications be?

3.g Publications and Contempt of Court

1. With the rise of public interest litigation and a more activist judiciary, courts have been regularly thrust into the limelight in recent years, often provoking confrontations with the media that result in contempt proceedings. The rationale of contempt proceedings is to prevent erosion of public confidence in the administration of justice.

2. The law of contempt is one of the grounds for reasonable restrictions under Article 19(2) to the freedom of speech and expression. While civil contempt refers to the wilful disobedience to any judgment, or order of a court, criminal contempt is an offence under Section 2(c) of the Contempt of Courts Act, 1971, and is punishable by imprisonment of up to six months. It is defined as the publication of any matter which lowers the authority of any court, or scandalises or tends to scandalise, prejudices or tends to prejudice, or obstructs or tends to obstruct any judicial proceedings, or the administration of justice. It is evident that this definition is extremely wide, particularly as it is unclear what the words "tends to" encompasses.

3. In India, the courts have generally not distinguished between scandalising the judge as a person, and scandalising the court. Other countries have progressed to a more liberal regime. In UK, scandalising the Court has ceased to be an offence, a change brought in by the Crime and Courts Act 2013. In the USA, the offence of scandalising the court is unknown and courts initiate action for contempt only when they determine that there is 'clear and present danger' to the administration of justice.

4. There have been repeated calls for reform of contempt of court laws. The NCRWC recommended in 2002 that Article 19(2) be amended to provide for the justification of truth and public interest in matters of contempt. In 2006, Parliament amended the Contempt of Courts Act to introduce Section 13(b), which permitted justification by truth as a valid defence if the same is in public interest and made bona fide¹⁴⁶. Nevertheless, the manner of application of this defence in the courts has been inconsistent, and a constitutional amendment has not been introduced. Hence, there is a need to revisit the law on contempt and consider the need for further amendments.

Conclusion

Media is recognised as the fourth pillar of Democracy after Legislature, Executive and Judiciary. It plays an important role in creating awareness among people and is capable of changing the viewpoint of society. Therefore, in order to ensure democracy, there is a need for free and independent media. Part III of the Constitution of India does not specifically talk about Freedom of Press. But in a number of cases Supreme Court held that the freedom of speech and expression enshrined in Article 19(1) of the Constitution includes freedom of the press.

Media has started functioning as a public court. It now conducts a parallel trial with the court. It fails to recognise the gap between an accused who is presumed innocent until proven guilty and a convict whose guilt is proved beyond reasonable doubt.

REFERENCES

Agarwal H.O., *International Law and Human Right*, (17th edition) Central Law Publications, Allahabad, 2008.

Bakshi D.M., *The Constitution Law of India*, Universal Law Publishing Co. Delhi 6th Ed. 2005.

Barth Alan, *The Rights of Free Men*, published by Knopf, New York, 1984.

Basu D.D., *Law of the Press*, Publishing-Western Law House western Kutchery Road Meerut, (UP) 2002.

Basu Durga Das, *Commentary on the Constitution of India*, Sarkar & Sons, Pvt. Ltd., Kolkata, 1965,

Bhasin Lalit, "Media world and the law", Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2010

Charles Beard, *Social Responsibility: Theory and Practice*, Edited by Theodore Peterson, published by University of Illinois Press, 1956.

Das Dr. Ajay, *Sting Operations and Law*, Discovery Publishing House, New Delhi, 2007

Das, P.K., *Famous Murder Trials*: Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2007.

Dayal, Keshav, *Famous Lawyers of Freedom Struggle and Trials of Freedom Fighters*, Universal Law Publishing, New Delhi, 2010.

Divan, Madhavi Goradia, *Facets of Media Law*, Universal Law Publishing Co. Pvt. Ltd, New Delhi, 2007.