ABSTRACT

In today’s time, high decibel journalism is in vogue in news channel debates. It doesn’t matter whether the panelist is making sound arguments; the only thing that matters is how much louder he can shout. And it is not just about television debates trying to garner TRPs. Media organizations, be it print, electronic or new media, in order to gain more audience bother less about credibility of source and instead try to sensationalize news which is done even at the cost of distortion of facts. This is evident from the number of outstanding cases of defamation media organizations have against them in court. In a case before the Judiciary, the media gives its own verdict and thus shapes public opinion. This in turn compromises with the decision of the judiciary and sometimes they have to give in under popular public sentiments and pressure. This was observed in the case of Afzal Guru where evidence was only circumstantial, and there was no evidence that he belonged to any terrorist organization. It is in this context Israel’s Prime Minister Benjamin Netanyahu once said “It doesn't matter if justice is on your side. You have to depict your position as just.” This statement goes on to show how much powerful media is and how quickly it can create a perception in people’s mind. They can make someone Hero and within no time can turn them into villain. In extreme cases such as that of Khurshid Anwar, the victim took even his own life. But still media doesn’t budge in. Media trial hampering Fair trial is a big concern. The media verdict overshadows the court’s decision. The electronic media in course of history has time and again intervened in judicial process. And now it is not just limited to television, with the entry of social media platforms such as Facebook and Twitter the situation has further nosedived. Whenever questions are raised over ethics, media dodges it with the argument of Free Speech. And hence this study would examine few media trial cases where justice was either denied or hampered due to media practices. Also other aspects of Media Trial such as legal consequences, positive aspects, impact on society and solutions would be discussed in detail. For this purpose secondary data analysis of research papers, news articles and reports
(Law Commission report) was done. Few books relevant to the topic such as - Handbook of Internet Crime (Yvonne Jewkes and Majid Yar), Athletes, Sexual Assault and Trials by Media (Deb Waterhouse-Watson) and Media, Crime and Criminal Justice Images, Realities, and Policies- Ray Surette were also studied to gain deeper knowledge on the issue.

**Keywords:** Media Trial, Television, Social Media, Legal, Fair Trial, Justice
INTRODUCTION

Media is the 4th pillar of the country which keeps the other three estates in check. It has responsibility to report issues that matter in objective manner. But since its inception, media has used its power to undermine the judiciary by crossing the ethical line. But still media holds an important role in our society. The importance and significance of the press has aptly been stated by the first Prime Minister of India, Pandit Jawaharlal Nehru, who has opined that he would rather prefer a free and independent press inclusive of all its dangers, instead of a regulated or restricted press. He was aware of the dangers involved in free and independent press; he still preferred that to a press which was restricted. Also Jeremy Bentham once said “Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.” It is in this context the issue of media trial arises. The Supreme Court has described trial by media as “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.” The media while covering a court case portrays the accused as villain by calling them criminals, crooks, cheats, frauds, bloodthirsty demons, money-hungry wolves and similar terms which are not based on facts and are meant only to sensationalize the news, thus causing damage to the dignity of accused person.

Media has now reincarnated itself into a ‘public court’ (Janta Adalat) and has started interfering into court proceedings. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’. Now, what we observe is media trial, where the media itself does a separate investigation, builds a public opinion against the accused even before the court takes cognizance of the case. According to Ray Surette, ‘trial-by-media’ have three basic flavors- 1. Sinful Rich type 2. Evil stranger psychotic killer 3. Abuse of Power trial. And media sticks to this mentioned stereotype throughout its reportage. Thus a need arises to pull the reigns of the media and put reasonable restrictions so that decisions of the judiciary are not undermined in near future.

LEGAL ASPECT

Freedom of Speech vs. Right to Privacy: India does not give privacy a fundamental right status, while freedom of speech and expression (which includes Freedom of Press) is protected under Article 19(1) (a). And thus media continues to exploit this loophole in its advantage. Nevertheless the Courts have protected the Right to Privacy to some extent under tort law, Article 21 and under the reasonable restrictions enumerated in Article 19 (2) of the Constitution. The right to report legislative proceedings is also a part of the press freedom. The press enjoys the privilege of sitting in the Courts on behalf of the general public to keep them informed on matters of public importance. The journalist therefore has the right to attend proceedings in Court and publish fair reports. However this is not an absolute right. There are also other important considerations, for instance the reporting of names of rape victims, children, juvenile and woman should be prohibited. This restriction is placed because of their weak position in the society that makes them vulnerable to exploitation. Therefore in the interests of justice, the court may restrict the publicity of Court proceedings. In some cases, under section 151 of the Civil Procedure Code, 1908, the Court has the inherent power to order a trial to be held in camera so that the verdict is not presented by in a twisted manner.

Under the Tort law, a personal action for damages would be possible for unlawful invasion of privacy. In these cases, the publisher and printer of Journal, magazine or book or the broadcaster and producer of a broadcast would be liable in damages. These would arise basically in relation to matters concerning the private life of the individual, which includes the family, marriage, parenthood, children and his sexual life.

Fair Trial: Harry Browne has said “A fair trial is one in which the rules of evidence are honored, the accused has competent counsel, and the judge enforces the proper courtroom procedures - a trial in which every assumption can be challenged.” Fair Trial is an integral part of the criminal judicial system in India. It encompasses several other rights including the right to be presumed innocent until proven guilty, the right to a public trial, the right to legal representation and the right to speedy trial. Right to a fair trial is absolute right of every individual within the territorial limits of India vide articles 14 and 20, 21 and 22 of the Constitution. Needless to say,

2 Available at https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/download/2128/1868
right to a fair trial is more important as it is an absolute right which flows from Article 21 of the constitution to be read with Article 14. Freedom of speech and expression incorporated under Article 19 (1)(a) has been put under ‘reasonable restriction’ subject to Article 19 (2) and Section 2 (c) of the Contempt of Court Act. One’s life with dignity is always given a priority in comparison to one’s right to freedom of speech and expression.

**LAW COMMISSION’S 200TH REPORT**

The most reckoning research on the positive and negative aspects of media trial has been elaborated in 200th report of the Law Commission entitled- Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971) that has made recommendations to address the damaging effect of sensationalized news reports on the administration of justice. The Commission has recommended prohibiting publication of anything that is prejudicial towards the accused- a restriction that shall operate from the time of arrest. It also recommends that the High Court be must empowered to direct postponement of publication or telecast in criminal cases.

**Defamation:** Under Section 499 of the Indian Penal Code, defamation is committed: “Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases herein after expected, to defame that person.” Under Section 500 of the Indian Penal Code, defamation shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or both.³

The following are some defenses which may be invoked against the crime of defamation:

1. Truth published for public interest;

2. Publication of a substantially true report.

3. It is not defamation to express in good faith any opinion regarding the merits of any case, which has been decided by a Court of Justice, or the conduct of any person as a party, or the witness or the agent, in such case.

As far as defamation under tort law is concerned, as a general rule, the focus is on libel (i.e. written defamation) and not on slander (i.e. spoken defamation). In order to establish that a statement is libelous, it must be proved that it is (i) false, (ii) written; (iii) defamatory, and (iv) published.

Defamation requires that the plaintiff should be identified by name or description or position or photograph or by anything which would enable the reader or viewer to know or recognize him, which would consequently cause defamation. Even if the libel statements are not made directly against a person but he is aggrieved by them, then he has the right to maintain a complaint.

CONTEMPT OF COURT

In India contempt of court is of two types:

1. Civil Contempt

Under Section 2(b) of the Contempt of Courts Act of 1971, civil contempt has been defined as willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

2. Criminal Contempt

Under Section 2 (c) of the Contempt of Courts Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which: (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

But there is also immunity provided to media under the Contempt of Court Act, 1971 as pre-trial publications are sheltered against contempt proceedings. Any publication that interferes with or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding, which is actually ‘pending’, only then it constitutes contempt of court under the Act. Certain overlooked aspects like publications in the media at the pre-trial stage, can affect the rights of the accused for a fair trial. Such publications may relate to previous convictions of the accused, or about his general character or about his alleged confessions to the police. Under the existing framework of the law media reportage, as seen during the Aarushi Talwar case, where the press, had literally gone berserk, speculating and pointing fingers even before any arrests were made, is granted immunity despite the grave threat such publications pose to the administration of justice.

THE PRESS COUNCIL OF INDIA ACT 1978

PCI enjoys powers to censure. If someone believes that a news organization has committed any professional misconduct, the Council can, if they agree with the complainant, “warn, admonish or censure the newspaper”, or direct the newspaper to, “publish the contradiction of the complainant in its forthcoming issue” under Section 14(1) of the Press Council Act, 1978. Given that these measures can only be enforced after the publication of news materials, and do not involve particularly harsh punishments, their effectiveness in preventing the publication of prejudicial reports appears to be limited.

Along with these powers, the Press Council of India has established a set of suggested Norms for Journalistic Conduct. These norms emphasize the importance of accuracy and fairness and encourage the press to “eschew publication of inaccurate, baseless, graceless, misleading or distorted material.” The norms urge that any criticism of the judiciary should be published with great caution. These norms further recommend that reporters should avoid one-sided inferences, and attempt to maintain an impartial and sober tone at all times. But significantly, these norms
cannot be legally enforced, and are largely observed in breach. Lastly, the PCI also has criminal contempt powers to restrict the publication of prejudicial media reports. However, the PCI can only exercise its contempt powers with respect to pending civil or criminal cases. This limitation does not consider the extent to which pretrial reporting can impact the administration of justice.

**CONTENT CODE**

For the recorded programs like Television serials, Broadcasting Content Complaints Council is present which is the self-regulatory body for non-news, general entertainment channels. But news is broadcasted live and the damage of the words once spoken is uncontrollable and irreversible. That’s why most of the news channels have many pending defamation cases which don’t seem to be the case with other television channels. Thus in need of legislation, Information and Broadcasting Ministry formulated the Content Code. The content code spells out Self censorship in libel, slander, defamation, harm and offence. The three tiered system includes a content auditor at the level of the channel, a peer or industry review of the violation, and the third level of the Broadcasting Regulatory Authority of India. So each channel or network will be expected to appoint a content auditor who will be the Points person for complaints and feedback from the public. It is the auditor who will be expected to report violations to the ministry. The second tier is consumer complaints committee that will include industry representatives, consumers and members of civil society groups. The committee will have the power to stop telecast of a program, edit objectionable portions, and direct the broadcaster to carry a disclaimer, warning or apology. At the final tier, the complaint can be referred to BRAI which has the authority to take the program off the air or even to ban the channel or charge penalties. These proposed regulations which are spelt out in the Broadcasting Bill (2007) were to be introduced in the Parliament. But The News Broadcasters Association and other bodies quickly got together to draw up their own Code of Ethics and Broadcasting Standard which they said would function on the principle of self-regulation.

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THE CABLE TELEVISION NETWORKS (REGULATION) ACT 1995

It states no program should be carried in the cable service which-

1. Contains obscene, defamatory, deliberate, false and suggestive innuendos and half truths

2. Is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes

3. Contains anything amounting to contempt of court

4. Criticizes, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country

Reasonable restrictions: Many other reasonable restrictions have been imposed by the numerous statutes on the freedom of press and mass media. Some of them are- Indian Penal Code, 1860 (Sections 124-A, 153-A, 153-B, 171-4, 295-A, etc.); the Indecent Representation of Women (Prohibition) Act, 1986; the Information Technology Act, 2000; the Newspapers (Incitement to offences) Act, 1908; the Prasar Bharati (Broadcasting Corporation of India) Act, 1990; the Telegraph Act, 1885; the Radio, Television and Video Cassette Recorders Sets (Exemption from Licensing Requirements) Rules, 1997; the Juvenile Justice (Care and Protection of Children) Act, 2000; the Official Secrets Act, 1923; the Parliamentary Proceedings (Protection of Publication) Act, 1977 and the Representation of the People Act, 1951 (Sections 123, 125, 127-A, etc.).

Side Effects of Media Trial: In cases like that of Nirbhaya Gang rape the judicial process was fast tracked in wake of public outrage and protests. Also continuous coverage of major scams and scandals lead to conviction of the accused. However there have been few side effects. Media portrayal of previous crimes of the accused creates prejudices in minds of people and also judges during a trial. If it’s a famous celebrity or public figure then he might either get more or very less jail term/ punishment due to public sentiments (or outrage). If the identity of witness is revealed then protection is a big worry as the accused may use power to threaten the witness to change his statement. Not just this, media may cause defamation to persons acquitted by the Courts on grounds of lack of proof beyond reasonable doubt. Such victims of media trial find it difficult to
resurrect the social standing they held before the public outcry. The media in its quest for sensationalism does not realize that such an exposure is likely to jeopardize the right to a life of dignity. This was evident in the case of Maria Susairaj where the national media constantly followed the accused, even when acquitted by the Court, eventually driving her and her family into cover and out of Bangalore. Another fascinating development in contemporary media has been the advent of competitions, voting, and opinion polls which media scholar John Hartley (2006) has dubbed as ‘plebiscitary democracy’. Especially in media representation of crime and justice, the opinion poll, often conducted by, or on behalf of, the media outlet, is now commonplace. In sexual offence cases the explicit description of ordeal on television might be mental torture to the victim. Also in such cases media instantly places in public domain initial statements of the victim in verbatim form. The initial statement of victim might be in state of shock and there might have been crucial facts left out. And if there are contradictions, these public statements made by victims or witnesses can be used during the trial. Hence, the prosecution might end up losing crucial testimony of one of its key witnesses. Convicted criminals have also become media ‘celebrities’ by virtue of the notoriety of their crimes. Sometimes criminals are cast as ‘folk devils’ by the media, like Phoolan Devi and Seema Parihar. Thus it is evident that media trials lead to breach of privacy, bias in public opinion and interference with sentencing process.

**Argument by Media:** The media believes it is the public’s right to know what happens in high profile legal cases. Also they firmly believe it is their right to communicate freely what they believe, even when it leads to Free Speech vs. Fair Trial. According to Press Freedom Index 2018, India is ranked at 138th position which shows that press in India is under lots of pressure and censorship which media uses time after time to gain sympathies and also to justify their actions.

**Effect of Social Media on Trial:** With advent of social media, the information on legal cases is reaching the multitude through Facebook, Twitter and other social media platforms. While they are a platform for discussion, but they have of lately become a place of hatred, trolling and bullying too. In high profile cases such as that of Salman Khan’s bail or Sanjay Dutt’s sentencing, twitterati goes berserk and starts taking sides without checking facts. Not just this, in wake of #metoo movement, it has become a medium to demonize, thrash and bash the alleged
perpetrator even when the case is not in the court yet. In India, defamation through the internet is punishable under Article 66A of the Information Technology Act of 2000 and may be punishable for imprisonment up to three years, and a fine. However, by virtue of Section 79 of the Information Technology Amendment Act 2008 which became a law on February 5, 2009, social networking websites “shall not be liable for any third party information, data, or communication link made available by him”

In recent years, there have been cases when jurors attempt to contact defendants on social media. Not just this, one of the jurors even set up an online poll publishing all the evidence, and then asked for her friends to cast a guilty or not guilty vote. There also have been cases of jurors posting their views about the trial using social media while the trial is still proceeding. Such disclosures violate the trial judge's instructions and impugn the integrity of the trial. In some of these cases, the juror's posts gave the impression that the juror had already formed an opinion in the case while the trial was still proceeding. The juror who turns to social media and either intentionally seeks or is inadvertently exposed to information pertaining to the trial no longer relies on just the evidence presented in the courtroom. For example, jurors are not told about a defendant's past crimes. This type of information is intentionally kept from them because of tendency to think that if someone has committed a crime in the past, then he probably committed the crime with which he has now been charged. But there is a possibility that the juror might chance upon this information through media.

MEDIA MAYHEM: NEGATIVE ASPECTS

Uma Khurana Case- Uma Khurana, a mathematics teacher of the government Sarvodaya Kanya Vidyalaya in central Delhi’s Daryaganj, was almost lynched by an angry mob after a fake sting operation alleged that she had blackmailed her students into prostitution. The Police however had not received any complaint against her. She was not only been manhandled by the protesting mob but was also terminated from her service by the Delhi Government. The court,

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5 Available at https://www.lexology.com/library/detail.aspx?g=cb85e6a2-2793-4d56-9c16-059f55dac7e2
however, had let off her in the criminal case, after the police charge sheet said that there was no "incriminating" evidence against her.

**Sexual assault case against Tarun Tejpal**- The sexual assault allegations against Tejpal in November 2013 received intense public attention and media scrutiny, because Tehelka had previously been involved in highlighting the issue of sexual violence in India. Friends and family of Tarun Tejpal believed that he is the victim of a media trial. Tejpal used social media to reveal the complainant's politics and her character and her demeanor. Also he demanded to make the CCTV footage public.

**AK Ganguly Case**- Justice Asok Kumar Ganguly is the former Chairman of the West Bengal Human Rights Commission and a former Judge of the Supreme Court of India who delivered judgment in some high-profile cases like the 2G spectrum case. A woman intern had alleged a recently retired Supreme Court judge had sexually harassed her. The Supreme Court then appointed a three-member committee to probe the allegations and identified A K Ganguly was the one who harassed her. He repeatedly denied all the charges. He was later indicted by the committee, which agreed with the intern's allegation that he had subjected her to "unwelcome sexual behavior" in December 2012. He resigned from the West Bengal Human Rights Commission after the Union Cabinet decided to make a Presidential Reference to the Supreme Court for his removal. He was acquitted of all charges after the intern refused to record her statement before the police.

**Aarushi Talwar Murder case**- The media drew flak in the reporting of murder of Aarushi Talwar, when it pre-empted the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder. Television crews and reporters were in and out of the Talwar house, trampling all over the evidence. The media extensively talked about the alleged sexual relationship between the girl and the Talwars’ male servant and also about the extra-marital affair of her father with a co-dentist. The excesses of the media prompted the Supreme to caution the media to be careful in its coverage of the case, and refrain from indulging in character assassination of the deceased and her father. It denounced the “sensationalist” media reports that were devoid of “sensitivity, taste and decorum. Recently both Rajesh and Nupur were cleared of all their charges by the Court.
Afzal Guru Hanging- The 2001 Parliament attack case convict Afzal Guru fell prey to the public outrage that was the product of excessive and unwanted media interference. Guru was denied the basic rights which must be accorded to every accused, especially in such grave offences. His defense produced no witnesses at all; his lawyer never met him; his statements were not verified through independent witnesses; out of 80 witnesses put forth by the prosecution, 56 witnesses, including some of the crucial ones, were not cross-examined. Despite such flaws, he was sentenced to death and subsequently hanged on February 9, 2013. The Apex Court, while confirming the death penalty, said, “The incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.” From his arrest to his conviction, the media went too far in generating this “collective conscience”, largely reporting the versions of the police and the prosecution, without due regard to his side of the story. In its judgment of 5 August 2005, the Supreme Court admitted that the evidence against Guru was only circumstantial, and that there was no evidence that he belonged to any terrorist group or organization. He was subsequently meted out three life sentences and a double death sentence. Similarly, S.A.R. Geelani, another accused in the case, was initially sentenced to death despite paucity of evidence against him. The media portrayed him a terrorist, relying mostly on the telephonic conversation between him and his brother.

Media Guidelines case- In 2013, the Court passed a landmark judgment in the case of Sahara India Real Estate Corp. Ltd. & Ors. vs. Securities & Exchange Board of India & Anr., also known as the Media Guidelines case. The Court laid down guidelines pertaining to reporting by the media of matters that are sub-judice. The Court observed that open justice is the cornerstone of the judicial system. However, this right is not absolute and can, therefore, be restricted by the court if the necessities of justice demands so. In pursuance of the same, orders prohibiting publication for a temporary period during the course of trial can be passed in exercise of the inherent powers of the court. The Court highlighted the significance of postponement order in cases where a fair and accurate reporting could nonetheless give rise to substantial risk of prejudice not in the pending trial, but in a subsequent or connected trial. Such order not only safeguards fairness of such later or connected trial, but also prevents possible contempt.
Sheena Bora Murder case- Sheena Bora, an executive working for Mumbai Metro One based in Mumbai, went missing on 24 April 2012. In August 2015 Mumbai Police arrested her mother Indrani Mukerjea, her stepfather Sanjeev Khanna, and her mother's driver, Shyamvar Pinturam Rai, for allegedly abducting and killing her and subsequently burning her corpse. But long before Indrani was proved guilty; her character assassination took place in every major TV channels that portrayed her as characterless and greedy women. None of the statements of those accusing Indrani of cold-blooded murder were proven by the Mumbai police until then. Yet, the media with its total conviction had already convicted Indrani Mukerjea for the murder of Sheena Bora.

Khurshid Anwar suicide case- Khurshid Anwar, the executive director of an NGO called Institute for Social Democracy got depressed after he saw a video on a social networking site where a 23-year-old girl alleged he had sexually assaulted her. And later he jumped to his death from his third floor residence in Vasant Kunj. Before he took the extreme step, he had also seen some TV channels running the same clip. And thus before the case could have reached the court, the accused took his own life.

Sankararaman murder case- It was a case on the murder of Sankararaman, the manager of Varadharaja Perumal Temple in Kanchipuram. During the trial, the media wrote about Shri Jayendra Saraswathi Swamigal, a Hindu religious leader, suggesting his guilt in the murder case, but the High Courts of Madras and Andhra Pradesh and the Supreme Court of India repeatedly found that there was no material evidence to find him guilty and came down heavily on the media.

Sunanda Pushkar Death case- In the death of Sunanda Pushkar in Jan 2014, the media not only implicated her husband Shashi Tharoor but also a Pakistani journalist Meher Tarar. Media supported theories of love affair between Shashi Tharoor and Meher and how Sunanda was unable to handle this alleged affair which pushed her to take her own life. Later after reports came in, it was found that she died due to poisoning.

Murder of Ms. Shivani Bhatnagar- Shivani Bhatnagar was a journalist for Indian Express who was murdered on January 23, 1999. The media hounded IPS officer R.K Sharma for sexual affair with Shivani and also her murder. RK Sharma was arrested and sent Tihar Prison just due to media pressure. In 2011, the Delhi High Court acquitted R.K.Sharma. He had to remain in prison
for nine years. The Delhi High Court observed that there was no clinching evidence against R.K. Sharma and that the trial court did a big mistake in convicting him simply on suspicion.

MEDIA TRIAL AS A NECESSARY EVIL: POSITIVE ASPECTS

The accused in some famous criminal cases would have gone unpunished but due to intervention of media they were convicted. Few of them are-

The Ruchika Girhotra Case- Ruchika Girhotra was a 14-year-old girl who was molested by Inspector General of Police S.P.S. Rathore. When Ruchika opposed such molestation, and lodged a complaint, he systematically harassed the victim, her family, and her friends. The girl went in such a trauma that she committed suicide. The case prolonged for 19 years with 40 adjournments, and more than 400 hearings. On 22 December 2009, after 19 years, the court finally pronounced Rathore guilty and sentenced him to six months imprisonment which was later increased. This case had huge impact as the case was highlighted by the media and had caused a tremendous sense of anger amongst the general public.

Jessica Lal Murder Case- This is the best example of media investigation which was done in the right spirit. Jessica Lal, an upcoming model was working as a bar tender at a party when she was shot in the head by Siddharth Vashisht (Manu Sharma) for refusing to serve him alcohol when he asked for it after closing hours. Manu Sharma was the son of a prominent Congress leader. The trial continued for nearly seven years and ended with the acquittal of the accused in 2006. This was mostly owing to the fact that almost all the witnesses had turned hostile and claimed, in some way or the other, to not know anything about the accused. The acquittal led to a huge public outcry. Pressure mounted on the judiciary and the Delhi High Court admitted an appeal against the previous order. Tehelka magazine conducted sting operations on many of the witnesses who turned hostile and caught them on camera accepting that Manu Sharma’s father had bribed them. Based on all the evidence collected, Manu Sharma was finally brought to justice and was given life sentence.

Priyadarshini Mattoo case- Santosh Kumar, son of a soon to be Additional Commissioner of Police, Delhi, harassed a law student. However even after regular police complaints, he was let
off after warnings owing to the influential position his father held. Santosh Kumar then raped and murdered the girl at her residence. The CBI, after taking sufficient evidence arrested Santosh, who later was acquitted by the Additional Session Judge due to lack of evidence and benefit of doubt. The trial court on January 23, 1996, acquitted the accused. The media criticized the decision strongly and created the pressure on the administration. Later it was found that vital evidence had been overlooked and on appeal by the CBI the earlier judgment was reversed within a span of a 42 days and Santosh Kumar was given life imprisonment.

**Nitish Katara Murder Case**- Nitish Katara, an IITian and son of an IAS officer and a businessman himself, had been in a four year relation with one of his classmates, Bharti Yadav, whose father was an influential criminal turned politician. The family was against their relationship and Bharti’s brother brutally hammered Nitish to death. Initially Bharti conceded to her relationship with Nitish, but two weeks later, due to pressure from her family refused to have ever shared any relation with Nitish other than that of a usual classmate. The media pressure however was surmounting and she conceded. The media also brought the fact into light that the accused had already confessed to his crime, which was not brought before the court by the investigating officer, as he was a business associate of Bharati’s father.

There have been several other such cases such as the Nirbhaya rape case, Bijal Joshi rape case etc. wherein the media brought the true facts in the public arena which amounted to a strong public pressure on the police as well as courts to bring fast justice to these cases. Apart from this, corruption cases like 2G scam, Bofors scam, Fodder Scam, Commonwealth Games scam and Harshad Mehta stock market scam were driven by media all the way till the day of verdict. Thus media acts as catalyst and aids speedy justice.

**CONCLUSION AND DISCUSSION**

Media in role of gatekeeper has done commendable job since ages. But over few decades it has started crossing its boundaries and is becoming an agenda setter and a law enforcer instead. The way investigative journalism is used to acquire information is a worrying aspect as ethics of journalism and norms set by government are kept aside in doing so. Not just this, sting
operations and issue of fake news is also playing havoc in many lives. In 2012 two zee news editors Sudhir Chaudhary and Sameer were arrested by crime branch of Delhi, acting on a complaint by Congress M.P Naveen Jindal who had accused the two of trying to extort RS.100 crore worth of advertisements from his company in return for dropping stories linking the Jindal group to Coal Allocation Scam which reveals a corrupt face of the media. Every time once in a while we come across news where anchor says that ‘we do not have the information to be able to comment on the full background of any of these crimes at present’, but that does not stop the anchor from predicting the future outcomes and possible theories related to the case.

Ineffective legal norms by PCI governing journalistic conduct also explains why media has freehand when it comes to coverage of court cases. Section 14 of the Press Council Act, 1978 empowers the Press Council only to warn, admonish or censure newspapers or news agencies. Also it has no further authority to ensure that its directions are complied with and its observations implemented by the erring parties. Lack of punitive powers with the Press Council of India has tied its hands in exercising control over the erring publications. Even Indian Courts do not go generally beyond warnings and imposition of punishment is not very common. But USA and UK Courts believe in monetary compensation to the victim from the press. The Courts abroad have a better and effective way of media regulation, which is highly lacking in India. In contempt of Court, there is a need for redefining the word ‘pending’ to expand to include ‘from the time the arrest is made’ in the Contempt of Court Act, 1971. Due to such lacunas, the press has a free hand in printing colorful stories without any fear of consequences.

In a nascent democracy like ours, the judiciary and the press have a pivotal and a crucial role to play. Both have to uphold the constitutional philosophy and the rule of law. The judiciary and the press have to supplement and not supplant each other. While the people have a right to be informed, the individual has the right to be protected and defended in a criminal case. In a conflict between fair trial and freedom of speech, fair trial has to necessarily prevail because any compromise of fair trial for an accused will cause immense harm and defeat justice delivery system. Although it is said that the right of an individual should give way to the right of the community, but in criminal justice system, it is the right of the accused, which is paramount. His presumption of innocence cannot be sacrificed at the altar of freedom of speech and expression.
Reporting is different from investigation of the same matter. Reporting involves giving the public, knowledge concerning the administration of justice and media should stick to that. Formation and expression of opinion is needed to safeguard against judicial error. But beyond reporting of cases, moving into conducting the investigation alongside the governmental system is overstepping by the media. Various opinions expressed in the media reports can bring in prejudice to the mind of the judges.

In recent years, the press is reporting incidents even before the Police gets to know about it. This investigative journalism is good but at the same time it is going out of hand. There is no way to regulate it or stop it. In ancient times, trial by ordeal was common but in today’s time it has changed its form, now the ordeal is not always physical but definitely mental. Even if an accused is freed of all changes, he/ she is socially excluded and people always doubt their character for the whole life. A horse doesn’t pull its reign on its own and thus more stringent laws and action can only ensure that an accused gets a fair trial.

SOLUTIONS

Even though media trials cause a lot of harm in court cases but it should not be outright rejected and banned. Instead focus must be paid in increasing the answerability, credibility and authenticity of the report. A striking feature of legal system is that they have no systematic mechanism for the dissemination of information about law. Sometimes lawyers learn about the law not from original sources but rather from professional and popular news sources. And thus efforts should be made in area of legal communication by the Judiciary itself so that no misinterpretation of judgment takes place which is done often by print and electronic media. The Indian Judiciary has taken a step in this regard with online website (such as ‘indiancourts.nic.in’) where information on court cases is available. During ongoing case, it must be ensured that the jurors or the Judge are in no way contact of any media information or reports. The fines on contempt of court by media houses should be increased to an extent that it acts as deterrent in near future.
The print and electronic media have gone into ‘aggressive journalism’ and thus are turning to wrongful resorts which mostly involve focus on sensationalism and compromise on credibility. The Press Council of India issues guidelines from time to time and in some cases, it does take action. But, even if ‘apologies’ are directed to be published; they are published in such a way that either they are not apologies or the apologies are published in the papers at places which are not very prominent. And so it should be ensured by PCI that the apologies are prominently visible so as neutralize the impact that the report had due to its publication. The PCI entertains more than 10,000 complaints a year but has no teeth and thus the purpose is defeated as it evokes no fear or sanction. Simply an apology is demanded from the press, if found guilty. These types of liberal approaches are not going to remedy the harm caused by press reporting. More stringent measures are to be adopted to curb the malady even when self-regulation operates as a useful and viable tool.

To limit media’s report is the most common and basic way that is used in all the countries. Although many countries have claimed to be a free and democratic country, in fact they have restrictions to media’s report on some news. Generally speaking, countries take approaches like ex ante regulations, afterwards punishment, legislative and judicial ways to restrict violations of suspect’s human rights from reports on crimes under investigation. The United States, where the value of speech and press freedom is better protected, usually restricts all parties of the case to make tendentious statements to the media through the approach of the issuance of “judicial restricting speech”. For reports on criminal news violating judicial restrictions, they will be punished according to civil or criminal responsibilities. The European countries lay emphasis on the protection of the suspect and they do not have a high tolerance in prejudicial reports. In order to avoid pre-trial report’s negative impacts on judicial justice, Restrictive gag order should be issued to prevent release and publication of deposition material. The postponement of publications/ publicity in appropriate cases would help in nullifying the spread of misinformation regarding the case.
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