

## CHAPTER IV

### ROLE OF MEDIA IN DEMOCRACY

“The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power; because they control the minds of the masses.”

—Malcolm X

1. Introduction.
2. Role of the media in a democratic society.
  - (a) The role of the media as an unbiased informer.
  - (b) Media's role as an educator.
  - (c) Media's role as a mentor.
  - (d) The role of the media as a guardian of the society.
3. Impact of media
  - (a) Positive impact upon the society.
  - (b) Negative impact upon the society.
4. Media and right of fair trial.
  - (a) Position of Media Trial in United States of America.
  - (b) Position of Media Trial in United Kingdom.
  - (c) Position of Media Trial in India.
5. Conclusion.

## **1. Introduction**

The media is considered as the backbone of the democracy. The media disseminates the unbiased information and empowers the masses with the power of knowledge. The media imparts knowledge regarding various subjects like political affairs, cultural affairs, world events, crimes, policies of the government, sports entertainment, environment, science technology and development. The media reveals each and every aspect of life on this universe, as there is no aspect which is not touched upon by the media. Media plays a very crucial and intricate role in a democratic setup, as the voters on the basis of the information projected by the media, frame their opinions and elect the government.

The people also make up their mind as to which people the power should be vested in. The media identifies the problems in a society and serve as a medium for deliberation. The media is also considered as a watchdog and is relied upon for uncovering errors and wrongdoings by those who are in power. It is therefore a reasonable assumption that the media adheres to certain objective, fair and ethical standards while performing their functions. It is on this assumption that the views projected by the media are true, and objective that the democracy thrives upon.

In generating a democratic culture that extends beyond the political system and becomes engrained in the public consciousness over the time, the role of the media is vital. It is through this media that people share their experience, learn and become aware of the happenings of the society. It is because of the constructive political debates held by the media, that various options and policies are opened, which are responsible for the development. Another very important aspect is that, the media functions in open public and therefore has greater effect vis-à-vis to a person who functions or makes a statement in a private chamber. The media to function effectively and efficiently, it must be objective. So also the journalist should necessarily be an impartial and unbiased observer who is not engaged or connected in any way with events or the issues; but merely records them impartially. This requisite

can be considered as the most indispensable founding stone for a healthy media industry to exist in the democracy<sup>106</sup>.

## **2. Role of the media in a democratic society.**

Media has occupied the most vital position in a democratic setup and constitutes the very bedrock of democracy. The democracy in absence of the media will be democracy which would be an aimless, futile exercise of attempting to be a democratic set up. The democracy will never meet the expectations of the people if media is eliminated. This means in absence of media there cannot be a democracy in true sense. One cannot undermine the role of media in a democratic set up. The most essential and fundamental function of the media is to project before the society only the bare truth, and should not tamper the facts without fearing or favouring any one. If the media has to fear, it should be afraid only of the God.<sup>107</sup> The role of media in a democratic society has various dimensions. In this chapter the researcher has made an humble attempt to analyse the dimensions of the media.

### **(a) The role of the media as an unbiased informer.**

In any country for the smooth functioning of the democracy, it is essential that the media should be given a free hand. The media should report freely, it should be able to comment fairly, and if needed it should be in a position to criticize without any fear, in the interest of the general public.

According to Hohfeld every right has a corresponding duty. There can be no right which is not correlated with the corresponding duty. Similarly the media is no exception, and has rights as well as duties. All the time only the rights and powers of the media are focused upon; however there are very duties imposed upon the media. The duty is to act as an informer of the society. This is a very demanding, taxing, and

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<sup>106</sup> Sivakumar S. Halsbury's Law Monthly, February 2009.

<sup>107</sup> Altheide DL, Michalowski RS (1999) Fear in the News: A Discourse of Control. The Sociological Quarterly 49: 475-503

a very intricate duty imposed upon the media. It is on this information that the public formulates the public opinion or the crosscurrent of the public opinion flows. On the other hand it is very important that media stick to their duty, because if they fail in their duty the democracy will suffer heavily. If media does not discharge its responsibility independently in any democratic country, the politicians are bound to behave like dictators or even worse than them. As Benito Mussolini had once rightly said, "Democracy is a kingless regime infested by many kings who are sometimes more exclusive, tyrannical and destructive than one, if he be a tyrant".<sup>108</sup> The fear of being exposed will keep the politicians on their toes and they will be accountable to some extent. This will prevent them from being rash, corrupt, as they will realize that if they behave in such way their days in powers will be numbered. So the media while playing a role of an informant also acts as a deterrent check on the tyrannical or the corrupt aspirations of the politicians or any other public figure.

The first and foremost duty of the press is to be unbiased informer. The main function of the media is to equip the masses with information. When the term 'information' is used, it has to be assumed that the information so provided by the press shall be unbiased. One thing here has to be noted that the role of press is not reporting, but unbiased reporting. The biased reporting will kill the democratic spirit itself, while the unbiased reporting will enable democracy to blossom or flourish.

It therefore becomes essential to understand the concept of the term 'unbiased'. Any information will be deemed to be unbiased only if it fulfils the following criteria

- (i) Information should be true, and it should be verified to be true.

True information means that the facts or the interpretation of those facts are in existence. Any facts or the interpretation there of which does not exist is said to be untrue or false. If the information is untrue or false then it is liable for two consequences. One, that the agency of media who gives false information will be caught in a network of libel or slander. The other grave consequence which is more dangerous is that the foundations of the democracy will be

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<sup>108</sup> Wählberg Anders, Sjöberg L (2000) Risk perception and the media. *Journal of Risk Research* 3: 31-50

shaken as the public will not be able to know and understand the real facts. The other aspect of this criterion is that the information should not only be true but should pass the test of verification. That means the information which the media passes on to the public should be supported by evidence. The media cannot project the information based upon some vague assumption or wishful thinking.

- (ii) The information should be projected in public interest.

The very cause for the media to survive is to protect the public interest. Any information which the media wants to gather, collect, disseminate and broadcast should necessarily be to protect the public interest. It should be remembered that the media exists and functions only to protect the public interest. Hence the media cannot impart any information which is contrary to public interest. To put it in other words the media should not impart such information to promote its selfish gains. Regardless of whatever is the nature of the news, the media should project it only in the interest of the public. While reporting any sensational matter, the media should report it in such a way that the peace and tranquillity is not affected. Further the media should remember that it plays a very important role of informant, public interest is of paramount importance and is to be protected at any cost. The creation and the existence or the survival of the media is only to protect, promote and secure the public interest.

- (iii) Information to be imparted in good faith that is without any malice,

This criteria is supplementary and the complementary aspect of public interest. As the media plays the role of the informant, it is mandatory upon the media to impart the information only and only in good faith. The activity of imparting the information should not be tainted with malice. The media should not convey any information to the public at large, with feeling of jealousy or hatred. Neither should the media communicate any matter for spiteful reasons, nor should it cover any news rashly only for the sake of gaining popularity. The different channels of the media should not engage in unethical and unfair competition of reporting the news at the earliest, and lastly end up giving incorrect version of the issue, thereby causing malice.

- (iv) Reporting the incidence as it occurs without colouring it with one's own opinion.

The media is only an agency to report the incidences, issues, or events; so the media should report the matter only as it occurs. The media should report the bare fact without giving its own view, allowing the viewers to formulate their own independent views. The media enjoys such a capricious position that sometimes it only changes the angle of the news whereby the whole focus of the news changes. This aspect of either highlighting or to downplay any issue should be avoided by the media. It should not paint or colour the news with its own thinking or ideas. The job of media is only to report any issue, and not to act as a judge and pass a judgment on that issue. Practical experiences show that the media projects the news in such a manner as it wants to be seen by the public.

- (v) To impart the news impartially.

This aspect is the most important ingredient of free media. Free media means that the media should report the matter without any favoritism. It should not happen that the news reporters report the news for some consideration. In the cases where the news which is actually an advertisement, but is disguised as a news item, is misleading the public who believes it to be news; is virtually misguiding the public. Hence the news agency or media who adhere to such practice will not be considered as a free media, irrespective of the fact that there was no external compulsion on it to do so. If the media continues to adhere this practice of projecting any good or bad news based on the considerations received by them, then the whole spirit of democracy will collapse; as the media will project only what rich people will want, and people believing the media will act likewise, depriving themselves from enjoying the real democracy.

From the above points it is clear that what is meant by unbiased information.

The media is only an instrument of imparting the news; so it should impart the news in an unbiased manner. It should not tilt the balance in the favour of any one; on the contrary it should only inform the public of any issue or event. The media should not take any side or express its own opinion in front of the public, otherwise the public will tend to feel that the view of the media, is rational and correct. If this happens, then the

media will not be an agency of imparting information, but will perform the role of a dictator. As there is no place of a dictator in a democracy, it will collapse. The role of the media is only to give information and not to assess it. But unfortunately the media generally expresses its opinion or evaluates the situation. In the recent case of JNLU students protested with anti India slogans; and one of the students was arrested by the police. Some Media Channels trying to project his innocence stated that the arrested student was not shouting any anti India slogans, conveniently forgetting that he was the very part of the same protest where the anti India slogans were being given. This is just an instance to show how the media is capable of projecting the news tainted by its own opinion. One has to take a note of the fact that the media is not empowered with power to adjudicate; but its role is only to impart information in an unbiased manner.

**(b) Media's role as an educator**

In a country like India, where there is illiteracy on one hand and the confidence of people on media on the other, the responsibility of the media increases automatically. Illiterate people will blindly follow the old traditions and beliefs, causing injustice and harm to the society. For example it is the old belief that a son is a boon and a daughter is a curse. The people in India, in order to get rid of this curse, kill the daughter (female foeticide). This had a tremendous adverse impact on the male- female ratio. The media then conducted a campaign by various ways, making the people realize that a girl is no way any less as compared to a boy; and by killing the girl child or aborting the fetus, the people are not only doing a moral wrong but also are committing a crime. The media campaign played a significant role in change of the outlook towards a girl child as a result of which such atrocities on girl child are reduced.

The media performs vital role in educating the masses in the following ways.

(i) Education through information.

Lack of information results into ignorance and securing or getting information promotes education. This means that information is very vital for education; and that many a times education depends upon information. The most valuable role of the media is to educate the public through information. When the

media gives the exit poll analysis the whole community who does not understand the complexity of the constitution is educated to the extent of how much majority of a particular party is required to form the government. The same can be said about the budget bill, when communicated by the media, the people get many insights in the financial matters. Almost every type of information imparts education in some way or the other. The crucial aspect of education through information is related to that section of society which is remotely placed or the illiterate section of the society. This underdeveloped section of the society may have never been in schools, but they learn through the medium of television. Other channels like the radio or the press plays equally important role of educating the masses. The prime function of the media is to impart information, but the ancillary aspect of this function is to educate the masses.

(ii) Bring awareness regarding individual's right.

The media enables the individuals to know their rights. India is not very developed in the educational aspect, because of which many people are unaware of their rights. It is the media who makes the people aware of their rights. The media is responsible for such a high percentage of voting, as the people were made aware of the importance of the constitutional right to vote. The media is also responsible for enlightening the weaker sections about their rights, like the women, children and the senior citizens. Media has played a tremendous role in the empowerment of women, and uplifting the status of them. The children are also made aware of their rights by the media.

(iii) By way of advertisements

One can say that the era of advertisements prevails today. Advertisements also promote education regarding the product, commodity etc, however education through commercial advertisement is limited. Apart from the commercial advertisements there are certain advertisements such as jaago grahak jaago, in respect of consumer courts or the advertisements bringing out the ill effects of vices such as smoking or drinking. Such advertisements play a meaningful role in educating the masses.

Well educated citizens can make democracy more meaningful.

It is through media that people become aware of so many aspects of life of which they are normally ignorant.

**(c) Media's role as a mentor.**

In a country like India the media is expected to play the role of a mentor. The job of the mentor is to educate the ward, and make him independent. The mentor should bring the ward to such a state from where the ward can take a decision on his own. Similarly the media plays a role of a mentor. It should only uplift the status of the individual and make him independent of formulating his own opinion. The media should not put its opinion in the mouth of the public. In other words, the media must not make the people believe what it wants the people to believe, but should make the individual capable to think independently. Only when a person will start thinking independently, it can be said that a society is enjoying democracy; otherwise the democracy will be a farce. For a mentor it is very easy to influence the ward or psyche the ward and make the ward believe that his mentor is right. But a good mentor never does like that. He makes the ward capable of thinking independently. The role of the media shall also be the same. The media should present all the true facts and it should throw light on all the aspects equally. After doing so it should give equal representation to all sides and put forth all the merits and demerits of the issue; and only then allowing the citizens to make their choices independently.

The media being the mentor of the masses should emphasize on the following aspects;

- (i) Foster the spirit of brotherhood among the masses
- (ii) Develop and encourage the spirit of religious tolerance among the masses.
- (iii) Inculcate in the masses the spirit of nationalism.
- (iv) Encourage the people to part with the old beliefs and superstitions.
- (v) Make the youth aware of political, scientific developments which are happening around.

The media is a powerful instrument of influencing the masses, and hence is considered to be an influential mentor. But the media has to take care that while

mentoring its wards; it should not distract them from their main objectives of development. The role of the mentor is difficult as well as delicate.

Democracy is meaningless without a free, neutral and active media.<sup>109</sup> So the media carries with it a very huge responsibility in a democratic setup which it has to fulfil very carefully without any bias toward anyone by bringing out the real facts before the public.<sup>110</sup>

**(d) Role of the media as a guardian of the society**

The media is a guardian of public interest in a democracy. The people who are in power tend to involve into corruption, as rightly pointed out by Lord Acton ‘Power corrupts and absolute power corrupt absolutely’. The media can be free only if it dares to differ with the Government if it strongly feels that Government has taken a wrong stand which is to promote their selfish interest rather than to serve the people. Under these circumstances the media, instead of just singing high praises of the government, should unflinchingly oppose the arbitrary action of the Government.<sup>111</sup>

Publicity is the best antidote for the arbitrary rule. This fact was valued even in the ancient societies in the 17<sup>th</sup> century. Many renowned philosophers have expressed that publicity and openness is the best way to protect the community against the tyrannical and arbitrary rule. The excessive use of the unwarranted or oppressive power can be controlled by exposing it to the public. Montesquieu the famous French political philosopher has opined that the abuse or misuse of power can be deterred by publicity. It is inherent in human nature that a human being likes to hear only praises; and does not like it when he is criticized for his actions. Not only this, but criticism acts as a check on his wrong and corrupt actions. As far as the public officers are concerned, expositions of their actions bring the public’s discontentment which acts

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<sup>109</sup> Zillmann D (2002) Exemplification Theory of Media Influence. In: Bryant J, Zillmann D (eds) Media Effects: Advances in Theory and Research. 2<sup>nd</sup> edition. Lawrence Erlbaum, Mahwah, New Jersey

<sup>110</sup> Dr. Bharti Das, Importance of Independent Media in Democracy, Scholar’s Voice: A New Way of Thinking Vol. 2, No. 1, January-June 2011,43-49

<sup>111</sup> Gunther R, Mughan A (eds) (2000) Democracy and the Media: A Comparative Perspective. Cambridge University Press

as a check on their arbitrary actions. In the role of the publication of the government or its officer's errors<sup>112</sup> the press plays an important role.

Now days the significance of the press has been widely acknowledged and in almost all societies the press has been commonly referred to as the "Fourth Estate." The press and the media have become extremely important in the democratic set up. The media provides the check and balance without which government cannot effectively function.

The media acts as a guardian of the society as it protects the rights of the people. Media through information and education makes the individual aware of his rights. In the cases where the individual's rights or liberties are infringed the media highlights such cases and hence the individual is secured of his rights and liberties. Actually the task of protecting and securing the individuals rights and liberties is done by the Indian Judiciary. However in the cases where the individual's right is infringed and such infringement is projected by the media; this publication acts as a deterrent check on the authorities who have attempted to infringe the right and thus it is stated that the media guards the individual's right. The judiciary acts as a guardian only in those cases which come before the court. But in the case of media this limitation is not applicable. On the other hand the media can operate *sue motto* and can expose the infringement of a right or liberty of any individual in the society. It does not wait like the courts for the individual to approach it for the publication of the infringement of that right.

In the classic case of *Nirbhaya*, it was only because of the media's efforts, that her right to file a First Information Report was secured. When that unfortunate incidence happened, and both the victims were thrown out of the bus, an attempt was made to file First Information Report; however the police refused to file the report. However when the media picked up the story and secured the support of the people not only

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<sup>112</sup> Stephen Holmes, "Liberal constraints on private power?" in Judith Lichtenberg (ed), *Democracy and the Mass Media*," Cambridge: Cambridge University Press, 1991. pp. 21-65.

from Delhi, the police who refused to file the First Information Report, now filed the same. This incidence and many others of such nature prove the fact that because of the media's vigilance it acts a guardian of the society. The role of the media to act as a guardian of the individual's right helps the society in attaining justice.

A vigilant media will analyse the government's action, organize debates, gather the opinion of the people, and communicate the suggestions of the people to the government.

There is no doubt that the media has a very responsible role to play in a democratic system.

### **3. Impact of the Media**

No agency is as influential as the media in the present times. The influence of the media is responsible for its dynamic growth in all its spectrums. The media has become more powerful because of its potential to influence the masses on large scale. One can see and experience the impact of the media in all walks of life. There is no aspect of the community in which the media has not played a crucial role. Every concept has got a positive as well as a negative side, and the media is no exception to it. The impact of the media on the masses is twofold:

- (a) The positive impact upon the society
- (b) The negative impact upon the society

#### **(a) The positive impact of the media upon the society.**

- (i) Makes the democracy more effective and meaningful
- (ii) Promotes the implementation of the Doctrine of Rule of Law
- (iii) Plays an active role to enforce the constitutional values
- (iv) Helps to formulate and organize the public opinion
- (v) Acts as an instrument of development of the state
- (vi) Promotes to protect the environment
- (vii) Promotes to provide aid in emergency situations
- (viii) Acts as a source of entertainment
- (ix) Promotes in a self development of individual
- (x) Promotes social values and helps in the eradication of social evils

**(i) Makes the democracy more effective and meaningful**

Democracy is the government of the people, by the people and for the people. The first aspect is that, the media imparts information to the public at large and based on this information; the people make appropriate choice of their representatives. In this way the media is indirectly responsible for the people's choice of the elected representation.

The second aspect is that the media abridges the gap between the government and the public. The media communicates the government's policies, plans, schemes, programs to the public. Simultaneously the media helps the government to know the pulse of the society by communicating to it the moods and reactions of the public. It is very correctly stated by Von Savigny<sup>113</sup>, that the government which is sensitive and alert to the public's mood that is the pulse of the society is a very stable and efficient government.

The third aspect is that the media aids and assists the government in implementing its policies. So also it helps the people to indirectly participate in the governments functioning by expressing their opinion. The last aspect is that, the press is the cornerstone of the democracy. It is generally said in a light vein that the press makes or breaks the government. The press or the media projects the electoral candidate in a good or bad light which plays a significant role in influencing the people to make their appropriate choices.

**(ii) Promotes the implementation of the Doctrine of Rule of Law**

According to A.V Dicey, Rule of law means that the law is supreme and no one is above the law. The nation shall be governed by the rule of law, and not by any arbitrary force. The rule of law demands that every action of the government or of any public authority has to be based upon the law. The lay man is unable to know, whether the governments action is within the ambit of legal powers or not. When the media informs the public of the arbitrary actions of the government or any public officer, then only the people are aware of such misuse of power. The media acts as a threat to the government as it projects the abuse or misuse of power instantly without wasting any time. This

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<sup>113</sup> Dias R.M ; ;*op.cit.* p 44

fear of projection by the media, of the misuse or abuse of power, acts as a deterrent effect on the government. Many a times the government is afraid to act in an arbitrary fashion because of the fear of the media who may expose it in front of the public; and the consequences may be dangerous for the government to survive in power.

Sometimes when the executive tries to shirk its responsibilities then the media perceives the matter, forcing the executive, to act in accordance with the law<sup>114</sup>.

**(iii) Plays an active role to enforce the constitutional values**

The Indian Constitution is the supreme law of the land. The media promotes the values enshrined in the constitution such as nationalism, integrity of the state, brotherhood, religious tolerance etc. The prime function of the media is to impart information; but while performing this function, the media also imparts education, awareness, brotherhood and fraternity, which are embodied in the Preamble and the Directive Policies of the state of the Indian Constitution. Not only this but it also helps to protect and promote some basic fundamental rights such as right to life, liberty and equality. When the state tries to infringe any fundamental or constitutional rights, the media exposes and projects such cases to the public at large. The government is afraid of such negative publicity as it tarnishes its image in front of the public and tries to immediately redress the grievance. To put it precisely one can say that the media indirectly compels the government to act within the constitutional framework.

**(iv) Helps to formulate and organize the public opinion**

In England public opinion plays a fundamental role in the governance of the state. No English Government dares to take a step against the public opinion, which prevails in the society. The public opinion of England is not only dominant and strong, but is also very well organized and hence can be conveniently communicated to the government.

In India before the liberalization policy of 1991, the public opinion was

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<sup>114</sup> The Nirbhaya case, *Supra.*, p121.

present but was not organized, and hence it could not be effectively communicated to the government. But after 1991, the media was free from the governmental control and helped in organizing the public opinion. The media not only informs the masses, but also collects, gathers analyses and arranges the public opinion, and communicates it to the government as well as to the other sections of the society. Every aspect of public opinion, that is the counter current of the public opinion as well as the dominant public opinion is collected and informed by the media. The media organizes and communicates the public opinion to the government; and it is the well known fact that the public opinion plays a prominent role in the governance of the state.

**(v) Acts as an instrument of development of the state**

The media provides the information about the various developments in the field of science and technology. Many a times this information regarding the various aspects of science and technology acts as an impetus to the research scholars to make inventions. By performing the prime duty of imparting the information, the media gives an insight to the public regarding the scientific agricultural and industrial development. By this information the remote sections of the society gets the knowledge of the development and take the benefit of the said developments; resulting in overall development of the state. The media is responsible for the development of the society through imparting the information to the public.

**(vi) Promotes to protect the environment**

As a result of the Stockholm Convention 1972, the whole world became aware of the need to protect the environment. Mrs. Indira Gandhi, the then Prime Minister of India, had represented India in the said International Convention. In pursuance to the conventions many statutes were enacted to protect the environment<sup>115</sup>. It is true that the statutes regarding the environment were passed, but for its effective implementation, it was necessary that there should be active participation of general public. This was possible because of the media. The media gave coverage to many programs like planting of trees,

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<sup>115</sup> Shastri SC, Environmental Law (2015<sup>th</sup> ed.) p. 448

saving water, saving fuel, construction and maintenance of toilets, and movements like 'Swacha Bharat' which had a tremendous effect on the people. As a result of these programs the environmental laws were implemented effectively. The public at large started taking steps to protect the environment because of the initiative taken by the media. The media has contributed indirectly in protecting the environment, by campaigning to protect the same.

**(vii) Helps to provide aid in emergency situations**

In the emergency situations like famines, floods or any other catastrophe, or in case of a disaster or a calamity, the media has played a vital role in providing aid and assistance, to the affected people. It is the welfare function of the state to provide aid or assistance or help to the people affected by such a disaster or a calamity. The media acts as an extended arm of the state in such situations and provides the necessary relief with the help of the public. It provides the aid to the victims, by informing to their relatives their whereabouts or other details. It publicizes the organizations which come forward to help in such situations. It also helps the affected people, by giving them helpline numbers. It also gives the information regarding such catastrophe which enables the people to take appropriate action.

**(viii) Acts as a source of entertainment**

Apart from imparting the information the media plays an important role, as acting as a source of entertainment. Entertainment is one of the important values of human life which adds spice to the mundane life. The traditional sources of entertainment programs like those of bhajans, kirtans, bharoods powada, etc have significantly reduced, and are replaced by the entertainment modes of media. Some ancient modes of media like Theaters and lavani have been rejuvenated by the media. The entertainment by media is more popular and cherished by media.

**(ix) Promotes in the self development of an individual**

Another tremendous impact of the media is that it promotes self help to an individual. Information regarding all the many fold facets of life such as, education, culture, vocation, profession, religion, science, technology,

development, research, cyber world, space communication, environment, sports etc is provided by the media. Relying on the information an individual can help himself to develop. The media not only gives the information to the public but also guides them by continuously and regularly giving detailed updates regarding developments and changes in all the spheres.

**(x) Promotes social values and helps in the eradication of social evils**

The impact of the programs conducted by the media promotes the social values, and helps in the eradication of social evils

The media, somewhere in 90' by advertisement tried to discourage the people from taking dowry. Even a movie projecting the ill effects of dowry was released.<sup>116</sup> The taking and giving dowry has not been eradicated, but has been reduced by the impact of the media's measures to project it as the social evil.

The media is also trying to curb the vices by repeatedly pointing out the serious effects on health of an individual, through their advertisements.

The media also undertook the beti bachao and beti padhao andolan, by which the media tried to convince the people that a girl is no less than a boy, and should not only be aborted, but should be brought up and educated equivalent to a boy. So also the parents should allow her to pursue career. The laws to these effects were there no doubt, but it needed the change of perception, which was brought to a great extent by the media.

The media is also responsible to reduce the child labour and untouchability by conducting various programs, and articles published in the newspapers.

The impact of media, these days is really very significant. It is a well accepted fact that the media is indispensable in any democratic nation, and it becomes more significant in a country like India where there is a significant number of citizens who are illiterate, as the media can play crucial role in not only informing citizens but

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<sup>116</sup> Movie title '*Ye Aag Kab Bhujegi*' released in 1991

making them able to think independently and help and them to make correct choices which may be beneficial for them in long run.

A responsible media keeps the nation united and ensure its way for success. It also fosters the sense of brotherhood among the citizens. In addition to this the media tries to breed the spirit of religious tolerance among the citizens.

The media always acts as a guide or a mentor. Just as mentor does not take the decisions but enables his ward or pupil correct decision; in the same way the media guides the society to take its own decision.

#### **(b) The negative impact of the media upon the society**

The researcher in this topic wants to focus on the short coming of the media.

While giving the coverage to any news sometimes excessive coverage or hype of certain sensitive news has led to the communal riots, on certain occasions. As certain uneducated people are more prone to provocations rather than the rational thinkers; such people get easily provoked and act in a rash or violent manner because of the news projected by the media. Repeated reception of the same news, especially sensational news breeds apathy and insensitivity. For instance in the famous Dhanajoy Chatterjee case, the overloaded hype of hanging led to the death of quite a few children who went to imitate the hanging procedure which was repeatedly shown on the main television channels. There are lots of instances of such negative impacts. Media should take utmost care in airing such sensational news, as it may lead, to some or unwanted tragedies.

Commercialization and liberalization has created a cutthroat competition in media, In an attempt to outdo each other print media has often gone one step further and published articles, cover stories, etc. on sex which is against the standards of public decency and morality. Further such cover stories promote sex crimes in the society. A few stalwarts in the field of the media have opined that the print media is publishing such articles and cover stories on sex to reduce the viewership of the television channels which have gained profound popularity in the recent times. This is in bad

taste of unhealthy competition and also reflects upon the cheap form of journalism.

The liberalization policy of 1991 had a two way impact on the media. On the one hand it gave the independence to the media from the government control; while on the other hand encouraged unhealthy competition among the various channels of the media. The effect of the unhealthy competition among the various channels of the media made the media more like the the business centre rather than an agency providing service. This is a sign of real danger for the democratic principles as the media performs the function on an economic consideration.

Another aspect of serious concern is this that the private channels of the media are continuously engaged in combating with one another for Television Rating Points (TRP). As a result of which the channels instead of imparting objective and fair news, they mould, twist and turn the news to make it more spicy and appealing to the public. So now the thrust of the channels is to project such news which is catching and appealing, rather than the real and factual news. The consequences of this are very grave because the main objective and the focus of the media is totally grounded and the financial considerations are allowed to play a major role in the function of imparting information.

As stated above the role of the media is like a mentor who helps or assists a person to take an independent decision; hence the media should educate the people through information and enable them to take their own decisions. However today, the media psyches the people such a way that the people tend to take a decision which suits the interest of media rather than the interest of people.

Every coin has two sides; similarly the media also is capable of projecting the positive and the negative impact upon the society. The positive impact of the media is to a considerable extent; however the negative impact is of such a nature that it results in undoing all the positive achievements.

#### 4. Media and right to fair trial

The media trial means where media itself acts as judiciary and tries to pose the accused guilty or innocent before any judicial pronouncement is made. This is only possible where the media is active and free, like that of India. It should be remembered, that the media should be active and not cause interference in the administration of justice. There is a thin line between activism and interference; the media should not interfere with the matter which is being adjudicated by the court of law. Media can report the proceedings of the court, unless directly prohibited by court in public interest.

But today it has become a fashion for the media to conduct media trial and some times, the media trial is conducted for getting TRP's or cheap publicity. Very often the media makes a personal attack on the accused or tries to prejudice the trial. The researcher has dealt with this problem in the following pages.

Before one can proceed to the instances of media trial it is imperative to deal with some fundamental principles of criminal jurisprudence<sup>117</sup>.

The cardinal principles of criminal jurisprudence on which the criminal culpability is based upon are:

- (i) Presumption of innocence, unless proven guilty by a competent court.

According to this principle every person is presumed by law to be innocent, unless and until, he is proved guilty by a competent authority of a court. No agency is allowed to put the stigma of “guilty of crime” on any person before the verdict of the court.

The Supreme Court has stated in *state of U.P. v. Naresh and Ors*<sup>118</sup>, no person shall be punished or sentenced unless and until his guilt is proved beyond the

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<sup>117</sup> Kenny; *Outlines of Criminal Law.*,

<sup>118</sup> (2004) 4 SCC 158)

reasonable doubt as the principle of presumption of innocence prevails. In *Kali Ram v. State of H.P.*<sup>119</sup> the Supreme Court has stated the grave consequences of convicting an innocent person. It has further stated that it would be extremely unjust to acquit a person who has committed an offence, and the confidence in the judiciary would be shaken. But it would be far more dangerous if an innocent person is convicted. As is commonly said let hundred guilty men escape gallows, but one innocent person should not be hanged.

- (ii) The parameter for proving the guilt is “beyond reasonable doubt”.

The burden of proof lies upon the prosecution to prove the person guilty. The scales of this burden are very heavy as the prosecution has to prove the guilt, beyond reasonable doubt. It means that the person is not guilty just because a doubt prevails in relation of his committing offence. But it is otherwise, that it is most certain that is beyond reasonable doubt that the accused and only the accused has committed the offence.

When media virtually conducts a trial, these golden principles are completely sidelined and ignored.

**(a) Position of Media trial in United State of America**

In United States of America the right to free press springs from the first amendment which states that the Congress shall make no law in respect of an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press<sup>120</sup>, This amendment has given a free hand to the press. By virtue of this amendment, the hands of the government are tied to a great extent. It is because of this amendment that the press gets a considerable freedom to publish a matter which is subjudice. Such a publication in respect of a matter which is subjudice, poses a serious threat to the right of fair trial of the accused.

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<sup>119</sup> (2001) 4 SCC 324

<sup>120</sup> [www.law.cornell.edu/constitution.-first-amendment](http://www.law.cornell.edu/constitution.-first-amendment)

The American Constitution confers freedom on the press even to publicize the matter that is pending in court of law<sup>121</sup>. Not only this, but the government is refrained from penalizing the newspapers which publish such matter. The impact of this freedom was seen in the popular case *Sheppard v Maxwells*<sup>122</sup>. In this case wife of a doctor was murdered. The doctor was charged with the offence of murder. The prosecution did not have adequate and direct evidences. When the accused was on bail, The Cleveland press, one of the largest newspapers, of Cleveland, in its headlines stated, 'bring him in'. It appeared that whether the accused was guilty or innocent, was not the consideration of the press, they just wanted the accused behind the bars. It was not only the Cleveland Press but the entire media was behind the accused. This case is popularly termed as a 'Roman Holiday' for the press. According to Paul Holmes, the Sheppard murder trial was "the gaudiest, most publicized, and the most controversial murder trial in the United States in modern times." Sheppard was convicted. The Supreme Court on 6<sup>th</sup> June 1966 stated that, Sheppard was denied of a fair trial which was his indispensable right.

This trial was one of the earliest trials that was followed by the American citizens, not only through the newspapers but also television set which were rapidly evolving at that time. The Sheppard media trial poses a number of questions. Is it ethical for the media to conduct a media trial just to give the public the juicy entertainment of the analysis of the case; which hampers the merits of the case? Or should the media trial be curtailed, and allow the judiciary to function without any interference from the media, so that the justice can be met with. However these questions have remained unanswered.

To make the matters worse during the Sheppard's case the Cleveland press also brought the pool of jurors into spotlight by naming all of them and writing about the fashion of female jurors. It is clearly evident that in this case the American media has made a gross misuse of the independence which was conferred by the two amendments.

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<sup>121</sup> The Fourteenth Amendment. Id. Amend XIV;

<sup>122</sup> 384 U.S. 333, 349-50 (1966)

The only restrictions the press earlier had in United States was that the doctrine of clear and present danger. This doctrine was evolved by the Supreme Court in *Schenck v. United States*<sup>123</sup> Charles Schenck, a socialist, distributed the flyers to servicemen. Those flyers stated that ‘the war is for the capitalist interest and a violation of thirteenth amendment of the constitution, which is against slavery’. It further appealed to the servicemen not participate in the war. The United States government charged him with the Espionage Act which was recently enacted by the state. Charles took the defense of the 1<sup>st</sup> Amendment which relates to the freedom to press. The Supreme Court of United States, while convicting Charles, evolved the doctrine of ‘Clear and Present Danger’. The right of freedom of press was limited by the doctrine of ‘Clear and Present Danger’

Later in the year 1969 the new "imminent lawless action" test in the *Brandenburg v. Ohio*<sup>124</sup> was derived. The leader of a Ku Klux Klan group was convicted for the crimes of sabotage, violence and using illegal means to promote terrorism. Under the garb of bringing about the industrial or political reforms the appellant was engaged in holding unlawful assemblies and was promoting Criminal Syndicalism. An appeal was filed in the Supreme Court; the Supreme Court in this case parted with the doctrine of ‘Clear and Present Danger’ and evolved the doctrine of "imminent lawless action", and acquitted the accused.

The doctrine of "imminent lawless action" is evolved by the Supreme Court of United States to draw the limits of free speech. This doctrine gives more scope to the right of free speech. It can only be restricted on two grounds

- (i) Speech that invites imminent lawless action
- (ii) Speech that is likely to produce such action.

In nutshell the doctrine of "imminent lawless action" is only attracted if the speech is an immediate threat to any lawless action. For example the speech “all the politicians to be put to death” may not be punishable as it does not cause any immediate or

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<sup>123</sup> 249 U.S. 47 (1919)

<sup>124</sup> 395 U.S. 444 (1969)

imminent danger and hence is protected by the free speech. However the speech “here is Mr. X, let’s kill him” will not be protected by free speech, because it is causing immediate or imminent danger of lawless activity.

From the above discussions it is clear that the doctrine of "imminent lawless action" is granting more freedom to speech and expression than the doctrine of ‘Clear and Present Danger’.

It will not be an exaggeration to say that in United States free press is given more significance than fair trial. Hence in United States of America the scope for media trial is wide.

#### **(b) Position of the media trial in United Kingdom**

In United Kingdom the position of free speech is quite opposite as compared to the United States. In United Kingdom the right of fair trial of an accused, is given more significance and value than the right to speech and expression.

In United Kingdom the right to speech and expression given to its citizen is a negative right. In 1998 England adopted the European Convention. Article 10 of the Convention gives them the right of free speech. The right to speech is subject to limitation with threatening, abusive or insulting words or behaviour intending or likely to cause harassment, alarm or distress or cause a breach of the peace (which has been used to prohibit racist speech targeted at individuals)

The courts do recognize the newspaper’s rights to publish accurate reports of public court proceedings, however they admonish that the newspapers have no right to publish comments or anything which does not actually occur<sup>125</sup>.

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<sup>125</sup> Contempt of Court Act 1981, s. 46 & 4 (U.K.) (outlining acceptable boundaries of contemporary reports of proceedings); Law of Libel Amendment Act, 1888, 51 & 52 Vict, c. 64 & 3 (Eng. & Wales) (amending and repealing parts of Newspaper Libel and Registration Act 1881 44 & 45 Vict. c. 60). Accord magistrates courts Act 1964, c. 21;

The judiciary has stated in *R. v. Evening Standards*<sup>126</sup> that the newspapers cannot publish any information related to the accused or the case even if the case is not filed in the courts of law because the public may give any information related to the case or the accused and hence the rights of the parties may be affected. The press is also prohibited from publishing the results of investigations of matters related to the official scrutiny.<sup>127</sup>

However this judgment may cause hurdles in the detection of crime and also in the procedure of investigation and inquiry related to the case. Further the media will also not be able to hold interviews of the people who are involved in the case.

In the United Kingdom there are various legislatures which limit the freedom of press, and hence the press cannot interfere with the fair trial. The Criminal Justice Act 1925, by section 41 prohibits any person to take or attempt to take any photograph of a judge or a witness. Also making a sketch or a portrait is prohibited. Section 12 of the Administration of Justice Act 1960 prohibits the publishing of the proceedings which are conducted under the Children Act 1989.

The Contempt of Court Act 1981 puts the following restriction on media.

- (i) According to section 9, the media is not allowed to use any tape recorders in the courts, and neither is allowed to record by any other means.
- (ii) By the virtue of section 10, a limited protection is granted to a person who does not disclose the source of information of any
- (iii) Section 18 of the Criminal Procedure and Investigations Act 1996 prohibits a person from knowingly using or disclosing an object or information which is prohibited by the statute<sup>128</sup>. The guilty person is punished with fine or imprisonment or both.

In England the press is not allowed to publish or interfere in any way with the judicial

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<sup>126</sup> ( 19241 40 T. L.R. 833 (K.B.) (U.K.)

<sup>127</sup> *Id.*

<sup>128</sup> [http://www.cps.gov.uk/legal/a\\_to\\_c/contempt\\_of\\_court/](http://www.cps.gov.uk/legal/a_to_c/contempt_of_court/)

process or justice, as it may hamper the fairness and the objectivity of the court proceedings. In the criminal cases once the arrest of the accused is made or a warrant is issued from that time onwards the press is prohibited from publishing any matter which will prejudice the case. In Scotland once the Simmons (complaint) is made the press is prohibited from publishing any matter related to the complaint.

It is the discretion of the court to allow or not to allow the media to report the trials which are conducted in the crowns or magistrates courts.

Therefore one can say that in England, the press and media are subjected stringent rules as far as the reporting of the trial is concerned. So automatically the instances of media trial are reduced considerably.

### **(c) Position of media trial in India**

In India the freedom of speech and expression includes the freedom of press. As it has been stated before, the freedom of press is a fundamental right, which is circumscribed by certain limitations. The authority of the media to conduct a trial falls within the scope of freedom of speech and expression. So in India the concept of media trial is prevalent and is gaining importance and popularity. The concept of media trial in India is not as broad as the concept existing in the United State of America; neither it is as restrictive as the concept of media trial in England. So the scope of media trial in India lies in between the scope prevailing in the United State of America and in England. The concept of media trial in India is old and was prevalent even before the year, 1961 because in the same year the Supreme Court has commented on the concept of media trial in *Saibal Kumar v. B.K. Sen*<sup>129</sup>. The court had very clearly said that it would amount to mischief if a newspaper as to conduct an independent investigation of a crime. The consequences of such a media trial would be grave and affect the whole system of justice as it would tend to cause a prejudice to the parties involved in the case. The court has further stated that the media trial would cause an interference or hindrance in the course of justice.

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<sup>129</sup> 1961 AIR 633

The point to be noted here is that the reflections of the court regarding the media trial point out the fact that the concept of media trial prevailed even then. In those days the media trial was conducted mainly through press, as the other channels of media such as television and other electronic modes were not in vogue for the domestic use. The media trial prevailed in a vague and not in a very systematic manner.

The media trial has become suddenly very popular and is often resorted to in the twenty first century.

One thing here has to be noted that the media trial should not be confused with the media trial. The media activism means where the media points out the injustice in the society and ensures that appropriate proceedings have been initiated. The following cases will ensure that how media has played a crucial role in dispensing the Justice. These cases also show that, had the media been inactive then, how the perpetrators of crime would had got scot free.

### **Nitish Katara murder case**

This is also a case where the role of the media is significant in bringing the accused to the books. Nitish Katara, a business executive was murdered 17<sup>th</sup> February 2002, by a son of the criminal turned politician. The only fault of the victim was that he was in the love with the daughter of the criminal turned politician who was studying in same class. Both Nitish and the girl were pursuing graduation from Institute of Management of Gaziabad. It is here they fell in love and wanted to marry. This was not approved by the Yadav family.

Nitish Katara was a 25-year-old Indian business executive in Delhi, who was murdered in the early hours of 17 February 2002, by Vikas Yadav, the son of influential criminal-politician D. P. Yadav. Nitish had recently graduated from the Institute of Management Technology, Ghaziabad, where, he had fallen in love with his classmate, Bharti Yadav, sister of Vikas. The trial court held that Nitish's murder was an honour killing because the family did not approve their relationship. Vikas and Vishal Yadav were later found guilty by the trial Court and awarded life sentence on

30 May 2008. On April 2, 2014, Delhi High Court upheld the Trial Court verdict of life imprisonment to the accused. On Feb 6 2015, Delhi High Court on re-appeal on Death Sentence, extended sentence as 25 years rigorous Life Imprisonment without remittance. On Sep 9 2015, The Supreme Court of India rejected a plea by Neelam Katara seeking enhancement of sentence to death for Vishal and Vikas Yadav

The Yadav family never approved of the relationship between the two, and Katara received threats several times. However, he was an idealist, and believed in "standing up to injustice". On the night of 17 February 2002, the couple attended a common friend's wedding, where Yadav's brother, Vikas, and a cousin were present as well. From there, Katara was taken for a drive by Yadav's brother Vikas Yadav and Vishal Yadav, and never returned. Three days later, Katara's body was found beside the highway; he had been battered to death with a hammer, diesel poured on him, and set aflame. Dr T D Dogra collected the blood samples of parents for DNA profiling to establish the identity of deceased Nithish Katara at AIIMS New Delhi.

On 30 May 2008 New Delhi fast track court sentenced Vikas and Vishal Yadav to life sentences for the kidnap and murder of Nitish Katara. Both were also fined Rs.160,000 each.

On April 2, 2014, Delhi High Court upheld the Trial Court verdict sentencing Life Imprisonment to Vikas Yadav, Vishal Yadav and the contract killer Sukhdev Pehalwan. An appeal by Katara's mother and prosecution seeking death sentence to the convicts is still pending before the High Court which will be heard on April 25, 2014. The Delhi High Court on Friday 06th Feb 2015 sentenced Vikas Yadav and his cousin Vishal Yadav to 30 years in prison for the murder of Nitish Katara, a friend of Vikas Yadav's sister.

On August 18, 2015, Supreme Court of India upheld the High Court verdict On 9 October, 2015 Supreme Court rejected the appeal filed by the sister of Nitish Katara for death penalty of the Yadav brothers. Hon'ble Supreme Court of India upheld the conviction for 25 years.

### **Sexual assault case against 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, including in a special issue on the topic in February 2013. There were protests against Tejpal by supporters of the BJP and its allies. Shoma Chaudhury's handling of this case was also criticised, for possibly underplaying the issue. The details of ownership, board of directors and financials further came under scrutiny. From the Registrar of Companies in 2012, *Tehelka* was owned by Anant Media Private Limited whose major shareholder was from a company affiliated to Alchemist group, a business conglomerate which was investigated by the Serious Fraud Investigation Office. The industrialist and Trinamool Congress member KD Singh also owned a part of this company.

### **"Sting journalism"**

After "Operation West End", *Tehelka*'s "sting journalism" influenced the country's media.<sup>[47]</sup> In five years, Indian news channels began to regularly feature sting operations. Tejpal called it the "greatest tool of journalistic investigation and exposure" and that it was for public interest.

Authorities and politicians demanded a sort of legislation over such "stings". Journalists against this, questioned the difference between this type of reporting and entrapment, between public interest and voyeurism. The Indian Supreme Court expressed its concern over the cases of freelance reporters selling their sting reports, questioning whether their intent was for money or public interest. Bahal said, "There's no thriving freelance sting journalism industry in India as the judges seem to think. Stings are serious business and not everybody has the guts to do it or telecast it."<sup>[47]</sup> Cases of sting operations where fake evidence were given increased the court's criticism. Tejpal said, "there may be bad, motivated and indifferent stings - but that is no different from the rest of journalism".

### **Jessica Lal case**

Jessica Lal (5 January 1965 – 30 April 1999) was a model in New Delhi, who was working as a celebrity barmaid at a crowded socialite party when she was shot dead at around 2 am on 30 April 1999. Dozens of witnesses pointed to Siddharth Vashisht, also known as Manu Sharma, the son of Venod Sharma, a wealthy and influential Congress-nominated Member of Parliament from Haryana, as the murderer. In the ensuing trial, Manu Sharma and a number of others were acquitted on 21 February 2006.

Following intense media and public pressure, the prosecution appealed and the Delhi High Court conducted proceedings on a fast track with daily hearings conducted over 25 days. The trial court judgment was overturned, and Manu Sharma was found guilty of having murdered Lal. He was sentenced to life imprisonment on 20 December 2006.

On 29 April 1999, Lal was one of several models working at an unlicensed bar at a party in the Tamarind Court restaurant, which was within the Qutub Colonnade, a refurbished palace overlooking the Qutub Minar in Mehrauli. By midnight the bar had run out of liquor and it would, in any event, have ceased sales at 12.30 am. After midnight, Manu Sharma walked in with his friends and demanded to be served liquor. Lal refused to serve Manu Sharma, who was with a group of three friends. He was ready to offer Jessica ₹ 1000 for it. Sharma then produced a 22 calibre pistol and fired it twice: the first bullet hit the ceiling which was to serve as a warning to Jessica not to refuse liquor, but when Jessica refused again, Sharma fired again and the second hit Jessica in the head and killed her.

Charge sheets were filed with the court on 3 August 1999.

The trial court has acquitted them because the Delhi police failed to sustain the grounds on which they had built up their case. The police failed to recover the weapon which was used to fire at Jessica Lal as well as prove their theory that the two cartridges, emptied shells of which were recovered from the spot, were fired from one weapon.

The police petitioned the High Court for a review of the case and on 22 March 2006.

On 15 December 2006, the High Court ruled that Sharma was guilty based on existing evidence, and also criticised the trial judge, S. L. Bhayana.

On 19 April 2010, the Supreme Court of India approved the sentences.

**(d) Priyadarshini Mattoo case**

Priyadarshini Mattoo case is another classic example where the media refused to let the case go out of the minds of public thereby ensuring the conviction of the wrongdoers, and prohibiting them to escape from the clutches of the laws, using their high position in the society.

Priyadarshini Mattoo was a 25-year-old law student was found raped and murdered at her house in New Delhi on January 23, 1996. Santosh Kumar Singh, the son of a Police Inspector-General, was the prime accused in this case. He fell in love with the victim and started to chase her, despite the fact that she clearly said no to his proposals.

Upset by her refusal on January 23, 1996 he raped and murdered the victim.

The trial court on January 23, 1996, acquitted the accused. The media criticized the decision strongly and created the pressure on the administration. The appeal was made to High Court and the High court setting aside the conviction of the accused and awarded death sentence of the accused. However, the Supreme Court on October 6, 2010, reduced the punishment to life imprisonment.

This case pointed out the power of the media. The accused had got benefit of doubt and was acquitted. Had the media not pursued the case then there would have been no conviction.

On October 17, 2006, the Delhi High Court found Santosh Kumar Singh guilty on both counts of rape and murder and on October 30 of the same year sentenced him to death. On October 6, 2010, the Supreme Court of India commuted the death sentence

to life imprisonment. Santosh Kumar Singh, the son of a Police Inspector-General, had earlier been acquitted by a trial court in 1999, and the High Court decision was widely perceived in India as a landmark reversal and a measure of the force of media pressure in a democratic setup. This decision went in favor because the facts were not presented correctly in the lower court. The intense media spotlight also led to an accelerated trial, unprecedented in the tangled Indian court system.

Priyadarshini was in the third-year of her law program, when she was found strangled in her uncle's residence. She had been raped, struck 14 times with a motorcycle helmet, and finally strangled with a wire. Santosh Kumar Singh, her senior in college, had been stalking and harassing her for several years, and was the immediate suspect. But Santosh came from an influential family - his father J.P. Singh was then Inspector General of Police in the Indian Union Territory of Puducherry

The Additional Sessions Judge G.P. Thareja delivered the ironical and widely criticized judgment in the trial court proceedings in 1999, which said of Santosh, that though the Court knew that "he is the man who committed the crime," he was forced to acquit him, giving him the benefit of doubt.

Following a public outcry, the CBI then appealed the district court's verdict in Delhi High Court on February 29, 2000.

On October 17, 2006, Santosh Singh, was found guilty under Indian Penal Code sections 302 (murder) and 376 (rape).

As recommended by the Central Bureau of Investigation the death penalty was awarded to Santosh Singh on October 30, 2006

In October 2010, the Supreme Court upheld the conviction of Santosh Kumar Singh but reduced the death sentence to life imprisonment. Priyadarshini's father expressed disappointment with the CBI for failing to appeal against this decision.

**(e) The Ruchika Girhotra Case**

The Ruchika Girhotra Case is about the of 14-year-old girl who was molested by Inspector General of Police *Mr. Shambu (S.P.S. Rathore)* in 1990 in Haryana, India. When Ruchika opposed such molestation, and lodged a complaint, *Mr. Shambu* who was holding a big post in the police force itself, systematically harassed the victim, her family, and her friends. The girl went in such a trauma that the girl 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 under Section 354 IPC (molestation) and sentenced him to six months imprisonment and a fine of Rs 1,000. Mr. Shambhu appealed against his conviction. Chandigarh District Court not only rejected his appeal on 25<sup>th</sup> May, but also increased the sentence one and a half years of rigorous imprisonment, On 11 November 2010, the Supreme Court granted bail to S P S Rathore on the condition that he remains in Chandigarh.

This case had tremendous impact as the case was highlighted by the media. It caused a tremendous sense of anger among the general public.

The importance and significance of the press has been very well stated by the first Prime Minister of India, Pandit Jawaharlal Nehru, who has opined that he would prefer a free and independent press inclusive of all its dangers, to that 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. He has expressed this because he was aware of the important role of the media. The main tool of media is reporting. Through reporting media can bring various issues to the notice of people which would otherwise go unnoticed. These issues of public importance make people aware of their rights and duties. A media which tries to make people aware by reporting is called as an active media. Active media is indispensable in a democracy;

but an interfering media may cause the system of legal justice to collapse. This is because the media itself pronounces the accused to be guilty or is declared even before a competitive court does so. The media does this only to make the news sensational, thereby increasing its saleability. The media trial is held mainly because of the publicity, and the media forgets that its job is to only inform and not to adjudicate. The constitution of India has vested every institution with specific and defined functions. The function of adjudication is vested in the judiciary and the function of inquiry and investigation is vested in the executive. The media along with its own function of informing grabs the adjudicatory as well as the function of investigation while conducting media trial.

The media fails to understand that it is the job of the judiciary to adjudicate the matter by appreciating the legal aspects of it. The media neither has the excellence nor the competence which the judiciary has. It is also not possible that the media has access to each and every piece of evidence, which is presented before the judge. The media does not even bother about the massive injustice it is inflicting upon the accused, when it repeatedly point him as guilty without giving him any fair opportunity to defend himself This creates enormous pressure on judiciary and also tarnishes the image of the accused. When the media continuously harps upon the guilt or the innocence of the person, it is possible that the mind of the judge is affected. He may be deprived of a clear, reasonable, rational and legal thinking. According to the Realist approach<sup>130</sup>, the judicial thinking is affected by the prevalent social facts; so the facts that the media hyping the guilt or the innocence of a person will no doubt influence the judicial thinking. Even an eminent jurist like Cardozo<sup>131</sup> has expressed that the judicial process not only involves the attitude, and the thinking of the judge but also the factors which influence his thinking which virtually affects the decision of the case. Not only may this but because of the media trial which sways the moods of the public in favour or against the accused, the judge, himself may feel under tremendous pressure. For example Salman Khan's case of rash and negligent driving. The media in Salman's case kept on projecting that he was guilty and had to be punished; and if he was acquitted, it would be only because he was a cine star. The

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<sup>130</sup> Friedmman; *Legal theory*

<sup>131</sup> Cardozo; *The Judicial Process*

judiciary underwent a tremendous pressure while delivering Salman's verdict. In any democratic setup the media and judiciary always play a complementary role where media explores and reveals the achievements and mistakes of an individual while judiciary takes care of legal problems of individual. The motive of the media is to discover the truth and to uphold the democratic spirits. That is why media is called as watch dog of society while the judiciary is called as a dispenser of justice.

There is no doubt that the media has the right to report any proceedings which is subjudice. However there is an implied condition that the media shall restrict itself to mere reporting of what has transpired without trying to form any opinion. This is so because the role of the judiciary is to adjudicate without having bias. The role of the media is to report what has happened.

A fair trial means that an accused is brought before an impartial judge who does not have any interest or bias. The judge shall then appreciate the evidence and either pronounces the accused guilty or innocent. However in the case of media trial, with media constantly harping upon the guilt of the accused, may affect the minds of the judges in two ways;

- (i) Either the judge starts believing the guilt of the accused, before the trial has commenced in the court of law, the result of which is, the judge may not appreciate the evidence fairly, thereby causing prejudice to the accused during trial.
- (ii) Or there is a strong possibility that the judge to save his reputation may give the decision against the accused from the fear of the wrath of the public. Public is highly influenced by media, and if the public is so influenced by the media, then the judge may dare not go against the public opinion, who may accuse him of being corrupt.

Under both circumstances it is a clear denial of a fair trial to the accused.

Another very far fetching but grave impact of the media trial is that if the media has projected an accused guilty and subsequently a competent court after weighing and balancing all the evidences for and against the accused has declared the accused innocent and has thereby acquitted him; he may have lost his image and status in the society, because the media has declared him to be guilty. When the media declares a person to be guilty the public naturally forms an opinion against him; and the public will never say that the media is wrong. Believing the media the public will form an opinion against the person and believe him to be guilty and may not accept him socially. This person who has been declared by the media to be guilty faces a lot of problem to rebuild his image and status of the society. Further to worsen the consequences, the public may have the apprehension that the person who is declared by the media guilty was acquitted by the judiciary on some extraneous consideration; because of the society may start distrusting the judiciary and the whole system of justice will start crumbling.

The reasons for the media trial to prevail and become so popular are identified as below

(i) The race of Television Rating Points (TRP)

This is the main factor responsible for the significant increase in the media trial. To increase the Television Rating Points, by attracting viewers, the media feels itself under compulsion to promote only that news such as media trial which is appealing to the viewers. The media is over enthusiastic and hypes the media trial making them popular. Every channel wants to show the media trial first on its channel to get popularity.

(i) Media trial, the want of the public.

The judicial process of justice is very cumbersome, lengthy and complicated; for a public to know and follow to a particular case. Hence it is very difficult for public to know the happenings of the case, and sometimes even the verdict of the case is not known. In contrast to this, by the media trial the public gets access to the information related to the case and hence the media trial becomes the favourite programs of the public. In the sensational cases

the public wants to know the facts and the issues involved in the case; and this is done very efficiently in the media trial. The public is not always well versed with the intricate legal issues, and is happy to know only what is projected by the media. For the sake to get information about a particular case, media trial is in demand of the public; irrespective of the fact whether the projected information is true or false.

(ii) The image of the media.

The whole world knows that media plays an important role in the preservation and promotion of democracy. It is also known that the media performs an important function of imparting fair, objective, and true information to the public. This image has been acquired by the media over a period of time and the public believes in the same image of the media. Hence whatever has been projected by the media in media trial; the public believes the trial to be correct and in consonance with justice. Nobody questions the intentions or the objects of the media of projecting the information and hence whatever is shown in the media trial is chewed and digested by the public.

(iii) Lacunas in the present legal system

The media trial survives and thrives because of some lacunas in the present legal system. The court procedure is so lengthy and complicated, that sometimes it takes years to dispose off a case. Many times it happens that the case is followed by the public in its initial stages, and eventually the public loses interest in the same case, as it drags on for years. In such cases the public feels that the justice is denied because the justice has been delayed. The sense of justice is present in the core of every human being and hence everybody wants justice to be done. In the cases of media trial the media not only projects the case in an interesting manner, but also apparently shows that justice has been done by declaring a person innocent or guilty. By declaring the person guilty or innocent by the media, the media tries to imprint upon the public, by a make way belief that justice is appeared to be done. When the villain in the movie is caught and punished, the public is satisfied and happy; in the similar fashion, when the media pronounces a

person guilty, or declares him to be innocent, the public is satisfied and happy irrespective of any legal issues.

It is not only because of the media's personal interest and gain that the media trial has become popular, but it is also the demand of the public. In 2006, the Law Commission in its 200<sup>th</sup> report has clearly stated that the consequences of media trial, not only affects the system of Criminal Justice, but also affects the rights of the accused, and damages his images in the society.

It is humbly submitted that the media and the judiciary should play a supportive role to each other. The media should bring out the wrong happenings and ensure that the prosecution against such wrong is commenced. However, once the prosecution commences, the media should limit itself to mere reporting; the researcher would like to state that the media should indulge into media activism. Media activism means, the media projects the irregularities or illegal procedural activities which are indulged by the court officials, thereby resulting into injustice. By media activism, the media highlights such irregularities and ensures justice. However by media trial the media exerts its influence and interferes with the judicial process thereby disrupting the balance of justice.

### **Conclusion**

Democracy cannot prevail without either media or judiciary, as both organs are indispensable for proper functioning. The judiciary should ensure that all the legal rights of the accused or convict should be protected. Our judiciary ensured this recently when it heard Kasab's plea for mercy even in the night to ensure that any of his right is not prejudiced.

The media should also take the inspiration from judiciary's sense of duty and implement the following aspects in criminal trials to avoid any prejudice to any of the parties involved in the case

- (i) The media should report the facts as they exist, without colouring or twisting or turning them.
- (ii) It should confine to reporting of the facts only and should not project any opinion regarding the facts.
- (iii) It should not try to create sensation by showing the concerned clips repeatedly.
- (iv) It should not make any imputation which may in any way tarnish the image of the judiciary.
- (v) It should ensure that while reporting the media is not violating any of the rights of fair trial of the accused.

If the media strictly adheres to the above guidelines, then the media will play a pivotal role in enforcing the democracy in the true sense.