

Trial By Media and the Doctrine of Separation of Powers: Reassessing Institutional Balance Under the Indian Constitutional Framework

Sree Lekshmi B¹, Dr. S. Ambika Kumari²

¹Research Scholar, School of Law, Vels Institute of Science, Technology & Advanced Studies (VISTAS), Chennai

²Professor and Dean, School of Law, Vels Institute of Science, Technology & Advanced Studies (VISTAS), Chennai.

ABSTRACT

In a democratic country like India, there is a soaring need for a check in media's interference in powers enjoyed by three organs such as legislature, executive and judiciary. At modern times, media is seen as fourth pillar of democracy. It has only the right to inform but it doesn't have the power to interfere in the rights of executive and judiciary. During colonial period, media didn't have the freedom to circulate whatever they want to but in post independence period media started to enjoy its rights. Even though Indian constitution did not expressly stated about media's right to freedom but through constitutional landmark cases, court has held that media enjoys freedom of speech and expression.

As times goes, media started its own parallel investigation regarding a case and reach a conclusion before court gives the verdict. Now it is investigative journalism rather than informative journalism. When any serious offence takes place, media people themselves goes for an investigation and conducts its own trial through discussion and debates decides the liability. It is the police who are having duty to do proper investigation and find out the details regarding the offence. Media interferes into the power of the police who are also coming under the executive organ of the state. Thereby encroaching into the power of the police and as a result what happens is that people believe in what media finds out through their own investigative journalism and will not believe in the efforts taken by the police in its investigation. Media after its own investigation, it conducts its trial through elaborate discussion and various debates. If suppose media is beforehand deciding that accused is innocent than afterwards if judge declares that accused is guilty. Public will trust the words of media and will stop believing in judiciary. Media interference into the power of judiciary hence affects separation of powers and criminal justice administration.

When each organ is separated than it should have the freedom to exercise its power without any outside party's interference. Here media is interfering into the sphere of executive and judiciary and thus leading to institutional imbalance. Hence it is affecting institutional balance assured under Indian Constitution. My paper is focusing on how trial by media is affecting separation of powers and reassessing institutional balance under constitutional framework.

¹ Research Scholar, School of Law, Vels Institute of Science, Technology & Advanced Studies (VISTAS), Chennai, sreelekshmi.law@vistas.ac.in

² Professor and Dean, School of Law, Vels Institute of Science, Technology & Advanced Studies (VISTAS), Chennai.

KEYWORDS: Media Interference, Institutional Balance, Media Trial, Investigative Journalism

INTRODUCTION

Being a democratic country, guarded by strong pillars such as legislature, executive and judiciary, there is a need for strong check in balance between the powers exercised by these pillars. During olden time we had only three organs to regulate democracy but now we have media who is seen as the fourth pillar of democracy. Separation of power are guarded in India constitution in Article 50. It talks about separation of powers from executive and judiciary. Each organ is given their own power so that it can handle its own sphere without any interruption and confusion. But it is seen that after the recognition of right to speech and expres: ***MEDIA INTERFERENCE, INSTITUTIONAL BALANCE, MEDIA TRIAL, INVESTIGATIVE JOURNALISM*** sion of media under Indian Constitution, it started encroaching into investigating power of executive and judicial power of judiciary and thus disturbing the smooth balancing of functioning of the vital organs of Indian Democracy and thus this leads to institutional imbalance. There is an urgent need to prevent media from meddling with the powers of other organs. Research paper focus on the separation of power and how media the fourth pillar of democracy is encroaching into the sphere of each organ and thus causing an institutional imbalance. This paper is also for reassessing the presence of institutional balance by finding out the impact of interference of media in separation of powers under Indian Constitutional framework.

DOCTRINE OF SEPARATION OF POWER: ORIGIN AND ITS VITAL IMPORTANCE

In various countries, separation of power has been brought into but it is not properly executed. It was United States where for the first time separation of power has been first adopted. It was in 17 th century, separation of power was first adopted .Powers was equally divided between different organs of the nation so that there is no intrusion by one organ into the power of the other. Montesquieu was one of the famous jurist who formulated theory of separation of power .It was his view that If all the powers are given to one single organ than there is a great chance of misuse of power³. In various landmark cases supreme court has held that separation of powers is an important part of Indian Constitution. Constitution is the supreme law of the country and each organ should work within its sphere and function as per law of the country⁴.

INTERFERENCE OF MEDIA IN POWERS OF ORGANS: REASSESSING INSTITUTIONAL BALANCE UNDER INDIAN CONSTITUTIONALFRAMEWORK

During colonial rule, media was strongly regulated and there was no freedom for the media to circulate but it is after the coming of Indian Constitutional it started getting its freedom to circulate, propagate and publish informative news for the good of the public. Even though it is not expressly mentioned in Indian Constitution regarding the rights of media but through landmark cases, court has held freedom of speech and expression include media also⁵. Now media is also regarded as fourth pillar of democracy but it doesn't have any power to interfere into the area of others organ of the democratic nation. Legislative

³ Zia Akhtar, Montesquieu's Theory of the Separation of Powers, Legislative Flexibility and Judicial Restraint in an Unwritten Constitution, file:///C:/Users/91892/Downloads/AC+2.4.3.3+Akhtar.

⁴ Keshvananda Bharti v. State of Kerala (AIR 1973 SC 146), Ram Jawaya Kapur v State of Punjab (AIR 1955 SC 549)

⁵ Indian Express Newspaper Ltd v. Union of India, Romesh Thappar v. State of Madras, Brij Bhushan v State of Delhi .

powers and executive powers are mentioned in Indian Constitution. Even separations of powers are guarded by the Indian Constitution. No organ is having power to interfere in other organ's power. After media's right is being recognised, it started exceeding its rights. It started its own way of investigation and trial and comes to a conclusion regarding the innocence of the accused before the court has held him guilty.

INTERFERENCE OF MEDIA IN EXECUTIVE POWER

When any offence occurs, it is the duty of the police to go for investigation and find out the truth. There are the executives who are having the duty to see that laws are properly implemented. But what really happens is media starts its own investigative journalism and propagate through all media that said arrested person is the accused but actual investigation of police is still haven't got over. This is like encroaching into the power of police in case of investigation. Police is only having the power to do investigation; media doesn't have the power to do investigation.

There was a sensational case called ISRO Spy case. In 1994 a renowned ISRO scientist was arrested by the Kerala police and was alleged to be a spy to Pakistan and was also accused of providing information to two Maldives women. All media except Asianet were conducting investigative journalism and reported that he is the spy of the Pakistan. Media were portraying long stories about two Maldives women and began to connect with the scientist and businessman. Soon famous Malayalam newspapers took up this news and mixed it up with corruption and politics. This was a great chance for the opposite party for using against the then chief minister. As a result image, reputation and good name of the scientist were injured.

Later in 2018 Supreme Court held that ISRO scientist Nambi Narayanan is innocent and was awarded compensation. And not even single media who portrayed against him has apologized for defaming him. It is because of the media publicity that politician also did their maximum to defame Nambi Narayanan so here media are the real culprits responsible for the loss undergone by the scientist and every person arrested for the case⁶.

Another sensational case is Double Murder case which happened in 2008. 14 year old Arushi and her family domestic help named Hemaraj were murdered. It is one of the high profiled cases which got media attention. Media covered every aspect of the case and personal details of the victims and their families. Media trial resulted in widespread assumption and judgments about the guilt or innocence of the accused. The interference of media shaped public perspective and created a divide in public opinion. Some sections of the media portrayed the parents of Arushi as the accused, while others questioned the competence of the investigating agencies and the police. The constant media scrutiny and biased reporting influenced public sentiment, leading to widespread predetermined ideas about the case. Arushi's father who was suspected by the media to be one of the accused was attacked by one among the public outside the court. This happened because of the impact of media trial on the public. Both the parents of the victim were acquitted by the court because of lack evidence. Though they were acquitted by the court but their image, reputation and right to privacy were violated. Even though got justice from court but there were already suspected as the murderers of their daughter by the public. This is one such

⁶ Sharanya Gopinathan, The criminal here is the media': Journalists recount how ISRO spy case was concocted, News Minute

<https://www.thenewsminute.com/kerala/criminal-here-media-journalists-recount-how-isro-spy-case-was-concocted-165502#:~:text=The%20core%20principle%20that%20guid>

best example which shows how media used its own investigative sting operation and how its investigative journalism is influencing the public⁷.

If the media continuously interferes into the power of police and starts its own investigation than people won't believe in the effort taken by the police in their power of investigation. Public only believe what media finds out through their own investigative journalism. These in turn result in malfunction of criminal justice system and institutional imbalance.

INTERFERENCE OF MEDIA IN JUDICIAL POWER

If the media beforehand declare that the arrested person is the accused and later if court held that he is innocent than public will lose faith in Judiciary. Today we have different categories of media including online media so it is very easy to influence or sway public opinion. People won't wait for the judgement to come, they just blindly believe what media is portraying through its own investigative journalism. This will pressurize the judiciary and thus affecting the powers and freedom of judiciary. Honourable justice Kurian during Bar Council of Meet at Chennai on 26.07.15 has stated in Nirbhaya Rape case about the public pressure undergone by him while deciding the case. Justice Kurian has stated that when a case is going, media should not handle a case, it creates lot of pressure on the judges as there are also human beings. He said that if he doesn't give punishment, public would have hung me. He also remarked that he has given the judgment according to his reason and not due to media but he added that it is better for the media not to go for trying a case when it is pending⁸. Even though media enjoys right to freedom of speech and expression guaranteed by the Indian Constitution but it doesn't have power to interfere in the space of judiciary. Proper separation of power is not there than there won't be proper administration of justice.

There is another sensational media trial case where media itself came into conclusion that it is a murder case before court itself decides whether it is murder or suicide. It is the Sunanda Pushka the wife of Shashi Taroor was seen lying motionless in a five star hotel. Here neither police officer has alleged Shashi Taroor responsible for the death of sunanda pushkar case. But the media starting itself depicted Shashi Taroor as the accused and they were highlighting as Sunanda Pushkar murder case even before the decision has come stating whether it is murder or suicide. Shashi Taroor filed a case for defamation against media for defaming his name and reputation by circulating news against him stating him as the one responsible for the death of Sunanda Pushkar and for permanent and prohibitory injunction restraining media from reporting any news regarding death of sunanda pushkar till the investigation is over⁹. The Court after hearing both the parties observed that the defendants can telecast stories containing facts relating to investigation of Mrs. Sunanda Pushkar's death, but cannot call Shashi Taroor as a criminal or condemn him as guilty¹⁰.

Right to privacy and right to freedom of speech and expression are the important fundamental rights under Indian Constitution. With the development of media, we can see right to privacy is getting violated. Right to be informed is given more importance than the accused or victim's right to privacy. In

⁷ Jaimini Kumar Sahu, The Role of Media in Shaping Public Opinion: A Critical Analysis of Media Trials in India's Criminal Justice System TIJER - INTERNATIONAL RESEARCH JOURNAL, <https://tijer.org/tijer/papers/TIJER2306185>.

⁸ Inspector Anil Kumar vs M/S. I Sky B, Indian Kanoon, <https://indiankanoon.org/docfragment/158958466/?formInput=%22media%20trial%22>.

⁹ Indian Kanoon, indiankanoon.org/doc/158657439/

¹⁰ Indian Kanoon, indiankanoon.org/doc/158657439/

1997, Rajagopal v. State of Tamil Nadu was a landmark case where the court observed that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. No one can publish anything concerning about it without his consent. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages¹¹

Now there is n proper administration of powers as we can see that media is interfering into the zone of imperative organs of the country . There are lot of judicial instances where court itself has advised the government to make sure that media should not encroach into other organ's power. Lot of advocates also filed petition for guidelines for regulating media from causing an institutional imbalance. Government has to see that there is a proper enjoyment of powers without any interference and disturbance.

CONCLUSION

It is a high time to see that separation of power is to be seen practically functioning. This theory should be applied with effect and strict norms and practice so that outside force or any organ won't have any right to interfere. There is a checks and balance between the powers of organ, each organ can check whether other organ is functioning and can bring balance but it cannot or meddle into the powers exercised by other organs. Media's duty is to inform the public and not to conduct its own investigation and trial. Police and judiciary are there to do these functions. The thing is if the media keep on disturbing institutional balance and this can negatively affect proper administration of justice. It is the vital organs such as legislature, executive and judiciary who are having the responsibility to find out a solution for stopping the media from exceeding its right to speech and expression guaranteed by the Indian Constitution. We cannot stop media as it is the most important part of democracy but we can prevent it from misusing its right to inform. It is the duty of legislature, executive and judiciary to see that media is regulated. There should be some strong media legislation for punishing those media people who misuse its right to speech and expression. And executive has the responsibility to see that particular legislation framed for regulating media is properly implemented. Judiciary is having the duty to punish media men for not following the said legislation. When all the three organ function together strongly than we can stop media from troubling separation of power and snooping in institutional balance.

¹¹ AIR 1995 SC 264.