

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

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Media Victimization and Human Right Violations

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ABSTRACT

Media, the fourth pillar of our democracy is the voice of our society. The role, functions and impact of media upon the society are much higher than its forms and versions as updated in every seconds. Everyday media updated its forms but deviate its norms resulted in victimization by media leads to great human rights violations. This article highlights the media victimization over juveniles, victims, accused persons, individuals' rights as well as collective rights which are protected through constitutional and statutory provisions in our legal system. This research works also examines the machineries constituted for the protection of individual rights and analyses how far it is effective in upholding human rights.

Keywords: Media, victimization, human rights, victims, accused, trial, privacy, juveniles, contempt, press, freedom, defamation.

I. INTRODUCTION

Mass Communication media - the mirror of the globalized World plays very important role for the progress and development of our society. In all the centuries, either the ancient print media or the modern new media, its ever-touching palm on human life is unpredictable. As a result of technological advancement, its form is varied, but its touch and influence are much higher. In the present scenario of India, the functions of media are very critical, therefore it requires a good care and treatment.

Media plays a very important position for communication and information sharing and dissemination of information in society. Media derives all the rights from Art.19(1)(a)² of the Indian Constitution which provides freedom of press. This freedom includes freedom to publish, broadcast and report information to the public with restrictions enshrined under Art 19(2) of Indian Constitution³. But in this era of media upsurge and the competition among the channels and newspapers, the media are deviated from their functions which root out their rich

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² India Const. Art. 19(1)(a)

³ India Const. Art. 19(2)

culture and heritage led to victimization and human right violations. Now the media extends its activities in the following nature led to

II. VICTIMIZATION OF CHILDREN/ DELINQUENTS

The United Nations Convention on the Rights of the Children upholds children's right freedom of expression⁴, protection of privacy of children.⁵, entrust mass media to disseminate information and material of social and cultural benefit to the child.⁶ The European Convention on the Exercise of Children's Rights (1996) also emphasizes children's right to express their own views in decisions affecting them, and calls on national bodies to provide information on children's rights to the media.

The Council of Europe Recommendation 1986 on a European Strategy for Children (1996) introduces the call for a change in the way children are viewed in society. The media should promote children's right to a healthy and balanced development, and all professionals who come into contact with children should have special training on children's rights.⁷ The publicising of children's rights is a first step to increase public awareness and promote change in the traditional view of the child, declared the Council of Europe's Parliamentary Assembly. It highlighted the negative effects of the media on children, and wanted to see more controls over new information and communications technologies.

The Council of Europe's Recommendation No. R (91)11, concerning Sexual Exploitation, Pornography and Prostitution of, and trafficking in, Children and Young Adults highlights the media's role in reporting this issue by inviting them to contribute to a general awareness of the subject and to adopt appropriate rules of conduct. The Council of Europe Recommendation No. R (85)11 on the Position of the Victim in the Framework of Criminal Law and Procedure draws attention to the interests of the victim, and the need to protect him/her from any publicity which will unduly affect his (sic) private life or dignity. In spite of plethora of legal provisions available at national and international level it is unfortunate that the children tend to get victimised and re-victimised⁸.

Similarly, the Convention on the Rights of the Child (CRC) stipulates that:

⁴ Art.13 of UN Convention of Rights of Child 1989

⁵ Art.16 of UN Convention of Rights of Child 1989

⁶ Art 17 of UN Convention of Rights of Child 1989

⁷ Art 8 of Council of Europe Recommendation 1986

⁸ Neethi Tendon, London School of Economics, U.K, Secondary Victimization of Children by Media, An analysis perception of victims and journalists. International Journal of Crime Safeguarding Identity of Children

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honor and reputation.
2. The child has the right to the protection of the law against such interference or attacks⁹.

Article 40 of the Convention, states that the privacy of a child accused of infringing penal law should be protected at all stages of the proceedings

Any media act in contravention of privacy of the child in reporting offence committed by the children below the age of 18 or disclose the identity of the child in conflict law shall be penalized¹⁰

The Juvenile Justice (Care and Protection of Children) Act ¹¹ lays down that the media should not disclose the names, addresses or schools of juveniles in conflict with the law or that of a child in need of care and protection, which would lead to their identification. The exception, to identification of a juvenile or child in need of care and protection, is when it is in the interest of the child. The media is prohibited from disclosing the identity of the child in such situations.

In The Anchorage Case (2011¹²) There is a landmark judgment regarding the rights of children. The case achieved widespread media coverage, which stressed on the fact that child abuse is rampant behind closed doors in India. More often than not, the abusers are in complete control of the victims. Two Britons, Duncan Grant and Allan Waters, ran the Anchorage Shelter Home in Colaba, Mumbai, where they sexually abused children for years.. After the facts became public, the two British nationals absconded but were made to face trial after a lengthy extradition process.

After taking all the facts, evidence and witness accounts, the sessions court convicted and sentenced Grant and Waters to six years imprisonment and a fine of 20,000 pounds each. However, they challenged this in the Mumbai High court, and in a shocking judgment, they were acquitted of all charges. Finally, the case went to the Supreme Court, which overturned the High court's judgment (uncommon to say the least) and restored the original sentence, thereby convicting the pedophiles. The judges, while passing the judgment, rightly said, "*A deterrent punishment is being imposed in order to help wipe out the name of India from the*

⁹ Art 16 of the Convention on the Rights of the Child

¹⁰ Section 23 of the Protection of Children from Sexual Offences Act, 2012.

¹¹ S.21 of Juvenile Justice Child Care and Protection Act 2000

¹² Criminal Appeal NO 1208 TO 1210 OF 2008.

map of sex tourism. Let pedophiles all over the world know that India should not be their destination in the future. Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes."

III. VICTIMIZATION OF OFFENDERS AND RELATIVES OF OFFENDERS

Media Freedom is a conflict with the rights of the offender and the backbone of the criminal justice principle. The accused is presumed to be innocent until proved his guilt". When a person alleged to commit an offence, is arrested such a person is viewed before the public as the real culprit through the wide coverage of media before the final verdict passed by the judiciary. If such an arrested person alleged to commit an offence finally acquitted by the judiciary; the civil and criminal remedy¹³ is available to such a person. But the boons of judicial system are a curse to such a person because he is again a victim of another crime.

The media reports should not induce the general public to believe in the complicity of the person indicted as such kind of action brings undue pressure on the course of fair investigation by the police. The Apex Court observed that the freedom of speech has to be carefully and cautiously used to avoid interference in the administration of justice. If trial by media hampers fair investigation and prejudices the right of defense of the accused it would amount to travesty of justice. The Court remarked that the media should not act as an agency of the court. The Court, commented, "Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending."

IV. VICTIMIZATION OF VICTIMS OF CRIME AND THEIR RELATIVES AND WITNESSES

The rampant prevalent on the unjust acquittals has not only eroded the confidence of common man confidence but also make the life of victim more pathetic.

In order to effectively prevent the **Media** from unmindfully and unduly publishing the photographs and other details related to the sexually assaulted victim invoking Sec 228A of Indian Penal Code as it would take a long time to get rid of the social stigma caused on the **victim** due to such unwarranted and prohibited **media** coverage and publicity;

Zaheera Sheikh, who was a star witness in the Gujarat Best Bakery case¹⁴, was a victim of excessive media coverage and sympathy. Her turning hostile invited an equal amount of

¹³ Sec 356 of BHATATEEYS NYAYA SANHITHA

¹⁴ 2004(4) SCC 158.

media speculation and wrath. Her excessive media exposure possibly endangered her life. Instead of focusing on the lack of a witness protection program in the country, the media focused on the twists and turns of the case and the 19-year-olds conflicting statements. The right of the suspect or the accused to privacy is recognized by the PCI to guard against trial by media.

V. INVASION ON FUNCTION OF OTHER ORGANS OF DEMOCRACY ESPECIALLY JUDICIARY

Media cross the demarcating line of control which resulted invasion on functions of other organs of democracy especially judiciary. Unfair and inaccurate reporting of pending cases adversely affects the criminal justice administration in India. The remedy against such an act is the S. 2 Of Contempt of Court Act 1972¹⁵. The Contempt of Court Act defines, contempt as both civil and criminal. In *M.P. Lohia v. State of West Bengal* ¹⁶the Supreme Court strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the Courts. *Saibal Kumar v. B.K. Sen.*¹⁷the Supreme Court tried to discourage the tendency of media trial and remarked,

“No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of the investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.”

VI. INVASION ON RIGHT TO LIFE AND PERSONAL LIBERTY

Article 21 of the Indian Constitution lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law. Thus right to a fair trial emanates from Article 21 which gives to a citizen the fundamental right to protection of life and personal liberty where there should not be any bias made due to the prior one sided or vague news propagated by the press and media. It is to be remembered that the press has no right to intrude into the private matters of an individual unless it is a matter of public interest and moreover not by a mere whim. The movement towards the recognition of the “Right to

¹⁵ Contempt of Courts Act 1972, sec. 2.

¹⁶ (2005) 2 SCC 686

¹⁷ 1961) 3 SCR 460.

Privacy” in India started with *Kharak Singh v. State of Uttar Pradesh and Others*¹⁸, wherein the apex court observed that it is true that our Constitution does not expressly declare the “Right to Privacy” as a fundamental right, but the said right is an essential ingredient of personal liberty. After an elaborate appraisal of this right in *Gobind v. State of Madhya Pradesh and Another*, it has been fully incorporated under the umbrella of right to life and personal liberty by the humanistic expansion of the Article 21 of the Constitution. In *R.Rajagopal v. State of T.N.*[¹⁹ and *PUCL v. UOI*²⁰ the courts observed that the right to privacy is an essential ingredient of the right to life.

VII. INVASION OF PRIVACY

According to Black’s Law Dictionary “right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned”. Supreme Court in *R. Rajagopal and Another v. State of Tamil Nadu and Others*²¹ are a true reminiscence of the limits of freedom of press with respect to the right to privacy. "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 the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.”

In India, the right to privacy is not a positive right. It came only in the event of a violation. The law on privacy in India has mainly evolved through judicial intervention. It has failed to keep pace with the technological advancement and the burgeoning of the 24/7 media news channels. The prevalent right to privacy is easily compromised for other competing rights of ‘public good’, ‘public interest’ and ‘State security’, much of what constitutes public interest or what is private is left to the discretion of the media.²²

Instead of their traditional functions of finding news, they are creators of news only for raising circulation and coverage. Media lacks individual as well as collective responsibility. This lack of responsibility creates victimization and violation of human rights. The media shall take

¹⁸ AIR 1963 SC 1295

¹⁹ (1994) 6 S.C.C. 632.

²⁰]AIR 1997 SC 568.

²¹ AIR 1995 SC264.

²² SONAL MAKHIJA, PRIVACY & MEDIA LAW ,THE CENTER FOR INTERNET AND THE SOCIETY, RETRIEVED FROM [HTTP://CIS-INDIA.ORG/INTERNET-GOVERNANCE/BLOG/PRIVACY/PRIVACY-MEDIA-LAW](http://CIS-INDIA.ORG/INTERNET-GOVERNANCE/BLOG/PRIVACY/PRIVACY-MEDIA-LAW)

special care and caution on publication of individual and social issues. Now the media are deviate from this social and individual responsibility resulted in victimization and human rights violations.

VIII. AUTHORITIES REGULATING MEDIA IN INDIA

1. The Press Council of India
2. Ministry of Information and Broadcasting or Broadcasting Authority of India
3. Cyber Emergency Response Team

These statutory bodies have their own norms and rules on each and every issue such as privacy, defamation, copyright, confidential official matters, reports of proceedings of the Courts And judicial acts, publication of matters regarding public officials, high dignitaries, celebrities and public figures etc ²³ in their respective media accordingly. The Press Council of India acts like a watchdog for print journalists. It has laid down a set of guidelines to ensure high standards of journalism in India. The Council also keeps track of newspapers for irregularities. The Council, however, enjoys no punitive powers and therefore limits its intervention to a moral guidance only

The recent activity of media is reporting, analyzing and commenting, instead of bringing the transparency and truthfulness in information which affects the credibility and confidentiality of media. Deviation from traditional dharma of media led to human rights violations. The self-regulation by the media as upheld by the Press Council of India and Broadcasting Authority of India is proved to be impracticable both in words and deeds²⁴.

The apex court on held that media should set up a “lekshmanrekha” while reporting human right violations. The media should give prime importance in reporting and publishing facts rather than creating sensation and to arouse sentiments of the people. Projection and language should be unambiguous, clear and decent.

Transparency and disclosures are at the root of a healthy media ecosystem, and which in turn is essential for the growth of democracy. Credibility of media sustains people’s trust in democracy. Media can play a major role in protecting and promoting human rights in the world. It can make people aware of the need to promote certain values in the cause of human rights which are of eternal values to the man kind. Press has a sacred duty to focus human

²³Refer Norms and ethics published by Press Council of India, Broadcasting Authority of India and functions of Indian Cyber Emergency Response Team.

²⁴ G N Ray, The Role of Media in Protection of Human Rights.p.7

rights violations and measures for protecting them.²⁵ Freedom of expression is a sacred right well accepted over the Globe and the media should respect this freedom.

²⁵ Id p.8.