CHAPTER 10. TRIAL BY MEDIA
CREATING BEWILDERMENT AMONG PEOPLE

The media in India is one of the freest in the world in terms of legal constraints. Freedom of expression incorporated in her Constitution in Article 19(1) remains an important facilitator for widespread engagement within a democratic atmosphere. As beautifully remarked by the first Prime Minister of independent India Pandit Jawaharlal Nehru - “I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press.” But that great man could not foresee the danger involved in the ‘administration of justice’ which is the very essence of the natural justice and the rule of law or rather he would not have expected the press to get involved into something which is beyond its limit and ethics too. To realize the vision of Mr. Nehru, the media has been provided with many freedoms and immunities so that this fourth pillar of democracy stands tall and strong. But what Lord Atkin relates with power is also well placed with the notion of liberty. Liberty does corrupt into license and is prone to be abused. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. It has to be remembered that freedom of expression is not absolute, unlimited or unfettered and in all circumstances, as giving on an unrestricted freedom of the speech and expression, would amount to uncontrolled license. Media has now reincarnated itself into a ‘public court’ (Janta Adalat) and has started interfering in to court proceedings. It completely overlooks the
vital gap between an accused and a convict keeping at stake the golden principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’. Now, what we observe is media trial where the media itself does a separate independent investigation, builds a public opinion against the accused even before the court takes cognizance of the case. By this way, it prejudices the public and sometimes even judges and as a result the accused, that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty unredressed. If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial Express Newspapers Vs. U.O.I., (1997) 1 SCC 133. See also re:Harijai Singh and re:Vijayakumar, AIR 1997 SC 73 wherein the Supreme Court of India has observed that the freedom of press is regarded as “the mother of all liberties in a democratic society”.

In the death of India born rich business woman Sunanda Pushkar (Canadian Citizen) in Jan 2014 the media not only implicated her husband and former minister Shashi Tharoor but also one Pakistani journalist woman Meher Tarar. It has become imperative for the police to question Ms. Meher Tarar who is not Indian National. This is trial by media Every fortnight the story appears as to what is new development in Sunanda murder

Afzal Guru trial was also an independent media trial. While all Hindu owned newspapers condemned Afzal Guru as traitor, the newspapers owned by Muslim media barons gave a clean chit to Afzal Guru on the basis of benefit of doubt and want of strong proof beyond technically obtained admission – confession while in custody.
Another famous trial by media case is that of the murder of Ms. Shivani Bhatnagar of Indian Express who was close to Information Technology Minister Late Pramod Mahajan. The media hounded IPS officer R.K Sharma for sexual affair with Shivani and also her murder. Ravi Kant Sharma IPS of IG rank was arrested and sent Tihar Prison just due to media pressure. In 2011 the Delhi High Court acquitted R.K.Sharma. He had to remain in prison for nine years. 41 Ms. Shivani principal correspondent Indian Express was murdered in 1999 in her East Delhi flat while she was asleep beside her infant son. Media ruined the life of a high ranking intelligent police officer I.G.P. Ravi Kant Sharma. His courageous wife Madhu Sharma stood by him and defended him for whole twelve years which was an ordeal until R. K. Sharma walked free in 2011. The Delhi High Court observed that there was no clinching evidence against R.K.Sharma and that the trial court did a big mistake in convicting him simply on suspicion.

The media played an important role in this process. People should know what happens in the courtroom and how justice is dispensed, but for most people attending a court hearing is impractical. Court is generally held during business hours and not on the weekend. For this reason the newspaper, the television and the radio become a link to the courtroom and provide the means by which the public gain an understanding of how the judiciary apply the criminal law. In this manner, there exists a public dependence on the news media. Society is saturated with media coverage of courtroom trials, of high profile offences and of prominent offenders. In some countries, entire trials are televised on public television. The general

public expects to be informed of why a person has been convicted of an offence and more particularly, what sentence the court has determined to be appropriate.\textsuperscript{42}

The sentencing process does not happen in a vacuum. Judges and lawyers live with others in the community and are well acquainted with public views on justice as expressed in the media. Judges and lawyers are part of the community that criminal laws serve to protect and it would be fanciful to suggest that they are not aware of public expectation as to how laws should be applied and how offenders should be punished. The central issue is whether those involved in the sentencing process take note of such media coverage, and further whether or not they are influenced by public opinion.\textsuperscript{43}

\textsuperscript{42} http://www.isrcl.org/Papers/2006/Petroboni.pdf
\textsuperscript{43} The Role of the Crown Prosecutor on Sentence IG Campbell (1985)9 Crim LJ 202