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MEDIA TRIALS IN INDIA: AN OVERVIEW

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INTRODUCTION

Trial by media is prevalent worldwide and one cannot deny its life-altering effects on the targeted persons. While the country at present is battling with a mass pandemic, economic recession, highest recorded unemployment, and various other issues, the media has not stopped going frenzy over the death of a celebrity actor, Sushant Singh Rajput. The situation was as if every news channel had taken it upon itself to give “justice” to the late actor. Their bid to raise TRP’s is seemingly proportional to the stooping levels of journalism. Previously, India had witnessed this state of media houses during the Aarushi Talwar¹ case of 2008; and despite our Courts consistently warning against media trials, the situation remains the same. Parallel trials disrupt court proceedings overlooking the golden principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’.²

Trial by Media it is the impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt regardless of any verdict in a court of law.³

As a matter of fact, it cannot be denied that pressure by media does not yield good results. Cases like Priyadarshini Matoo, Jessical Lal, Nitish Katara, are some well-known examples where media made sure that justice was served. In Nirbhaya, the impact led the government to amend laws surrounding the safety and security of women in India. Offline and online protests took a lift. No other rape incident had generated a force of such magnitude before.⁴ However, neutrality must be maintained while presenting an issue. Media typically exceeds its right by publications that are recognized as prejudicial to a suspect or accused. It includes publications concerning the character of the accused, publication of confessions, publications which comment or reflect upon the merits of the case, inappropriate photographs, police activities, imputation of innocence thus creating an

¹Dr. (Smt.) Nupur Talwar vs State Of U.P. And Anr, Criminal Appeal no. 294 of 2014 (Before the Allahabad High Court)

² Anamika Ray, Ankuran Dutta & K K Handiqui, *Media Glare or Media Trial Ethical Dilemma between two Estates of India Democracy*, 5 ONLINE JOURNAL OF COMMUNICATIONS AND MEDIA TECHNOLOGIES (2015) [emphasis added]

³ Ghalib Nashter, *Media and democracy-legal prospective*, 4 INTERNATIONAL JOURNAL OF LAW 16 (2018)

⁴ Somali Choudhary, *Media Trials: Contradiction to Media Ethics?*, Presented at MEDIA ETHICS: REALITY OR MYTH AT SHANTINIKETAN, WEST BENGAL (2013)

atmosphere of prejudice.⁵The media is considered as a watchdog of democracy and is relied upon for uncovering errors and wrongdoings. It is therefore a reasonable assumption that the media should adhere to a certain objective, fair and ethical standards while performing their functions.⁶

Media trials can be traced back to as far as 1921, to the Roscoe Arbuckle case. In India, it was initially prevalent through the print media. In 1961, the Supreme Court in Saibal Kumar v. B.K. Sen⁷ very clearly said that it would amount to mischief if a newspaper as to conduct an independent investigation of a crime and have grave consequences. After the liberalization policy of 1991 the media was free from government control, thus promoting unhealthy competition among the media houses and turning it into a booming business.⁸ It became a race of attracting viewers. The ways and kinds of news presented took a new leap. News began to be increasingly seen as a form of entertainment. There were themes and explanations imitating the format of entertainment programs (Comstock, 1980). News covering crimes were dramatized, emphasized and shown in superficial ways (cf. Fishman, 1978; Snow, 1984; Comstock, 1980; Cohen and Young, 1981). The conclusive result is what we see today, which is a merge of news and entertainment.⁹

IN THE NAME OF FREEDOM

Free speech is the epitome of any democratic society, also characterized by criticism and personal opinions. In LIC v. Manubhai Shah¹⁰, the Supreme Court pointed out that the freedom of speech and expression must be constituted to include the freedom to circulate one's views by word of mouth, or in writing, or through audio-visual media. This includes the right to propagate one's views through print or other media.¹¹ Freedom of press is not a separate right and is impliedly associated with Art. 19(1)(a)¹² of the Constitution¹³. Hence, reasonable restrictions under Art 19(2)¹⁴ apply to this freedom, and violators can be prosecuted under the Contempt of Courts Act, 1971¹⁵.

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⁵*Id*, supra note 3, at page.17

⁶Malcolm X., *Role of Media in Democracy*, SEMANTIC SCHOLAR (Aug 20, 2020, 6:37 PM), <https://pdfs.semanticscholar.org/34d2/bb9569364739846bcbf06dbf07ce56763c5a.pdf>

⁷1961 SCR (3) 460 (Before the Supreme Court)

⁸*Id*, supra note 6, at page 129.

⁹ Ray Surette, *Media Trials*, 17 JOURNAL OF CRIMINAL JUSTICE 298 (1989)

¹⁰1992 SCR (3) 595 (Before the Supreme Court)

¹¹Hon'ble Mr. Justice G. S. Singhvi, *Trial by media: A need to regulate freedom of press*, BHARATI LAW REVIEW 3 (2012)

¹² All citizens shall have the right to freedom of speech and expression.

¹³ The Constitution of India, 1950

¹⁴ Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

¹⁵ No. 70 of 1971, dated 24th December 1971.

Jawaharlal Nehru in his speech against the Press Act, 1910¹⁶ said, “I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press”. This was because the world is well aware of the consequences that follow from a strictly regulated press. However, a free press does not include wrongly influencing the audience or lynching the reputation of a person. It merely means that the press is allowed to function in the country with few reasonable restrictions laid down in the interest of the health, prosperity, and stability of the same society which the press looks to safeguard.¹⁷ Trial by media is a clash between free speech and the right of fair trial & Right to privacy of a person. The latter rights certainly cannot supersede the former. The media is expected to bring matters in the view of society and not to pass their own judgments on whether a person is guilty or innocent.¹⁸

The ethics of journalism have been in a compromising state due to their inquisitive eyes on the accused. Media today follows a pattern of sensationalism. It looks to grab the attention of viewers and readers. In a bid to entertain and keep their viewers interested, the media extensively covers sub judice (under trial) matters by publishing information and opinions that are clearly prejudicial and could prove harmful to the interests of the parties involved in litigation.¹⁹

The Blackstonian concept of freedom of press was expressed in as early as 1769; it contained four basic points (Grover, 1990) which still dominate the basis of freedom of press.

They are as follows:²⁰

1. Liberty of the press is essential to the state.
2. No previous restraints should be placed on the publications.
3. That does not mean there is press freedom for doing what is prohibited by law.
4. Every freeman has the undoubted right to lay what sentiment he places before the public, but if he publishes what is improper, mischievous or illegal he must take the consequence of his own temerity.

WHAT KINDS OF PUBLICATIONS CAN BE TERMED AS PREJUDICIAL?

As a matter of informing the media and the general public, The 200th Law Commission Report²¹ records 10 categories of publications that may be prejudicial to the suspect or accused. These are:

- a) Publications concerning the character of accused or previous conclusions.
- b) Publication of Confessions – Even though they are inadmissible under the law, publicising them can sub-consciously affect the impartiality of the court.

¹⁶ No. 1 of 1910, dated 8th February 1910.

¹⁷ Sudhir Dutta, *Law relating to contempt of courts in India: A study of legislative policies and judicial behaviour*, (Aug 13, 2020, 8:35 PM), <http://hdl.handle.net/10603/127669>

¹⁸ Arun Singh & Anil Kumar, *Media Trials in India*, SSRN (Aug 13, 2020, 10:10AM), <https://ssrn.com/abstract=2552426>

¹⁹ *Id*, *supra* note 3, at page 16.

²⁰ Prabhat Ranjan & Sindhuja Kashyap, *Media as the Fourth Estate of Democracy*, SSRN (Aug 15, 2020, 12:37 PM), <https://ssrn.com/abstract=2485908>

²¹ 200th Report on Trial by Media, LAW COMMISSION OF INDIA (2006)

- c) Publications which comment or reflect upon the merits of the case.
- d) Photographs – There is a likelihood of giving a colour of guilt to the accused with added emphasis.
- e) Police activities - It may not be contempt if the publication is intended to warn public at the instance of the police that a notorious criminal had escaped and public have to be careful or watch out for him.
- f) Imputation of innocence – Just as the way media can cite the guilt of an accused, it can also stress on the innocence of an accused. The Nanavati²² case can be cited as an example.
- g) Creating an atmosphere of prejudice - Witnesses may be deterred if they become the object of public criticism.
- h) Criticism of witnesses - Witnesses may be deterred if they become the object of public criticism.
- i) Premature publication of evidence.
- j) Publication of interviews with witnesses

The Supreme Court, on countless occasions has warned the media about their wrongdoings, but it has only gone to the deaf ear. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*,²³ the Court observed –

“There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.”

In *State of Kerala v. Poothala Aboobacker*²⁴ while analysing the effect of media trials on the society and the Courts, the Kerala High Court observed –

“The Fourth Estate does not seem to realize the irreparable damage inflicted on the victims of crimes and the alleged culprits and those close to them through the sensationalized journalistic adventures. Truth is very often surpassed, exaggerated or distorted to add flavour and spice to the stories. Trial by media can do more harm than good to the society at large. Instances are not rare when test parades are reduced to mere farce due to the injudicious publicity given to the alleged assailants by publishing their photographs. Every such act of adventurism exerts unnecessary pressure on the Courts which are to eventually try the alleged offenders. The fickle minded public which has been conditioned to believe a particular version through a calculated process of media indoctrination will be loath to accept a different conclusion. Hence, if the court who finally tries

²² K. M. Nanavati v. State of Bombay, AIR 1961 SC 112 381

²³ AIR 1972 SC 106 (Before the Supreme Court)

²⁴ 2006 (2) KLD (Cri.) 482 (Before the Kerala High Court) [emphasis added]

the alleged culprit were to ultimately record an order of acquittal for want of legal evidence before it, it may not be out of place for the public at large to conclude that the verdict of the court is wrong. They may even attribute motives in the presiding judge.”

The general public has a right to information however, the information disseminated must not be misinformation.²⁵ Reporting is the topmost function of the media. But reporting is mixed with investigations nowadays. Media trials are disguised in the name of ‘Investigative Journalism’, and though investigative journalism in itself is not prohibited, this right does not stretch as far as knowing the personal life of an accused, naming and defaming friends & family of the accused, name of a rape victim or family problem of a public figure. This information does not constitute the definition of news’.²⁶ Another category of investigation is that of Sting Operations. Some journalists against it have questioned these operations and have termed them non-ethical. The Supreme Court had also expressed its concern over the cases of freelance reporters selling their sting reports, and questioned whether their intent was for to protect public interest or tainted with money.²⁷

The Khurrana case is an instance of fake Stings, where a government school teacher in Daryaganj was recorded on camera appearing to force high school students to become part of a prostitution racket. The Sting was aired live on a news channel, and a girl pretending to be the student of the said teacher was shown to be revealing her ordeal on camera to a supposed reporter. Minutes later a mob gathered outside the school, physically assaulted Khurrana, set a car on fire and cried for justice. Uma Khurrana (the teacher) was arrested solely based on the Sting. It took ten days for the police to discover that the sting had been staged and the teacher framed. The student was an aspiring journalist, and the reporter was supposedly an accomplice of a person to whom the teacher owed money. The teacher had filed a case for defamation on all the individuals involved in the Sting but ended up withdrawing it later.²⁸

The do’s and don’ts for Indian media have been well laid out in the Norms of Journalistic Conduct.²⁹ The first point itself lays down that media houses should avoid publishing of inaccurate, baseless, misleading, or unclear material; news regarding exposed wrongdoings must be backed with irrefutable shreds of evidence. Point 6 speaks about protecting the right to privacy of a targeted person. News including suggestive guilt without any reference must be avoided (Point 10). A range of detailed parameters, norms regarding investigative journalism are also laid out (Point 26). However, these are just norms and there can be no enforceability. We have the Press

²⁵ Fuqran Ahmed, *Human Rights Perspective of Media Trial* 1 ASIA LAW QUARTERLY 58 (2009)

²⁶Gifty Oommen, *Privacy as a Human Right and Media Trial in India*, 3 THE AGE OF HUMAN RIGHTS JOURNAL 115 (2014)

²⁷*Id*, *supra* note 5.

²⁸*Fake sting: Uma Khurana withdraws defamation case*, THE TIMES OF INDIA (Aug 25, 2020, 6:15 PM), <https://timesofindia.indiatimes.com/city/delhi/Fake-sting-Uma-Khurana-withdraws-defamation-case/articleshow/3629666.cms>

²⁹*Norms of Journalistic Conduct*, PRESS COUNCIL OF INDIA (2010)

Council of India however, there is no punitive sanction, and the Council only owes an apology if newspapers are found guilty. The establishment of this Council dates back to 1966, and its regime does not include electronic media.³⁰ Hence, we desperately need laws to regulate electronic media houses.

The Supreme Court during as early as 1991 had pointed out the need for adequate laws to regulate radio and television media in the Cricket Broadcasting Case³¹. The Court stated that the Indian Telegraph Act, 1885³² was severely under-equipped to include broadcasting media.

“The Act was intended for an altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. Except Section 4(1) and the definition of telegraph, no other provision of the Act is shown to have any relevance to broadcasting media. It is, therefore, imperative that the parliament makes a law placing the broadcasting media in the hands of a public/statutory corporate or the corporations, as the case may be. This is necessary to safeguard the interests of public and the interests of law as also to avoid uncertainty, confusion and consequent litigation.”

Sensationalising issues to provide entertainment, at the cost of the reputation of a person is unacceptable. The country has seen enough damage on account of personal gains by the media.

WHY DO WE WITNESS MEDIA TRIALS?

We have seen that gone are the days where the only function of the media was to report the news to the public. Now along with reporting, the media tries to present their own research and analysis of the issue at hand. This comes with high competition since the media today is commercialised and globalised. Their priorities lie in increasing their profit / TRP ratings. Social responsibility cannot be expected of the contemporary commercialised media.³³ TRPs attract more advertisements. Time slots that have a higher number of viewers are sold at a higher price which leads to higher revenues; and we as viewers are the reason these channels are hungry for TRP's.³⁴

The judicial process of justice is very cumbersome, lengthy, and complicated. Hence it is very difficult for the public to follow know the happenings of the case, and sometimes even the verdict of the case is not known. Media trials provide access to the information related to the case (that also includes added emphasis and facts that may not be true to the case) and hence these trials

³⁰*Id, supra* note 26, at page 118.

³¹ The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal, 1995 SCC (2) 161 (Before the Supreme Court)

³² No. 13 of 1885, dated 22nd July 1885.

³³*Id, supra* note 25, at page 54.

³⁴ Shubham Sachdeva, *Why media gives so much importance to TRP*, MARKETING MIND (Aug 15, 2020, 10:17 AM), <https://www.marketingmind.in/why-media-gives-so-much-importance-to-trp/>

become the favourite programs of the public. The public is not always well versed with the intricate legal issues and is happy to know only what is projected by the media.³⁵ For the sake of getting 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 (Indraneel, 2016). The facts of the concerned case with its every detail, all stages of the police investigation painted with controversial comments and observations are presented, the evidence is discussed, and expert opinions are sought every now and then. The public is also dragged in this process; they are asked to send in their opinions through SMS, logging on to the channel's website or through their social media accounts.³⁶ This entire dramatization gives it the look of a reality show which obviously has viewers glued to their screens.

CONSEQUENCES THAT FOLLOW

Constantly lynching the reputation and violating the privacy of an individual during the pendency of a trial can have devastating consequences if the accused is acquitted, or even worse, convicted by the influence of the trial. Innocents may face the wrath of punishment or the accused may not get a fair trial. He/She may also get a higher sentence after trial than they deserved, owing to the drama created by mass media.³⁷ Some media trials persist even after the judgement is pronounced.

LOOKING AT SOME NOTABLE CASES –

In the Khursid Anwar case of December 2013, India TV broadcasted an interview with a young woman who alleged that Khurshid Anwar, a 55-year-old social activist, had caused her to consume spiked drinks during a party at his house. She accused him of raping her after she passed out. During the interview, the reporter used phrases such as “India TV ladega iss ladki ko insaaf dilaane ki jung” and “Iske saath ku karm karne waale ko inzaam tak pahuchaye”. The morning after the interview was aired, Anwar’s body was discovered outside his home – the man had committed suicide. Direct labelling of Mr. Anwar as a rapist drew him to commit suicide on the very next day.³⁸ Soon after, the friends and family members of Anwar refuted the claims and allegations levelled against him, and started "Justice for Khurshid Anwar" and "Stop the media trials" campaigns on Facebook.³⁹

The case of Aarushi Talwar or the Noida Double-Murder Case is one of those that truly revealed the cruel and inhumane side of our media. This case had to be decided based on circumstantial evidence since the police had failed to secure the crime scene. The prosecution had failed to prove the guilt of the Talwars beyond reasonable doubt and the media had failed to bring this to public

³⁶*Id, supra* note 11, at page7.

³⁷ Ashok Kumar & Dr. Priti Saxena, *Human Rights, Media Freedom and Media Trial in India*, 1 SHODH PRERAK 34 (2011)

³⁸ Rahul Mehotra, *Media Trial of Sexual Offence: Legal Sanctity*, SSRN (Aug 18, 2020, 2:44 PM), <https://ssrn.com/abstract=2405371>

³⁹ Sumit Kumar Singh, *Khurshid Anwar suicide case: Victim undergoes medical examination, stresses on rape charge*, INDIA TODAY (Aug 21, 2020, 4:02 PM), <https://www.indiatoday.in/india/north/story/ngo-boss-khurshid-anwar-suicide-case-police-records-victim-statement-sexual-assault-charges-221806-2013-12-24>

notice. Instead of bringing out the truth, they chose to go with the flow of what suited their agenda of entertainment. When the body of Hemraj(their servant) was recovered, IG of Police (Meerut) Gurudarshan Singh declared that Rajesh had committed the murders after discovering Aarushi and Hemraj in an objectionable position. Although the officer was transferred for his defamatory utterances, his words captured the minds of the media. The media went to the extent of claiming that Aarushi had sought comfort in an affair with Hemraj because her father was having an extra-marital affair. The majority of media and the public were caught on to this narrative, and the consideration of other possibilities was foreclosed.⁴⁰

Media at any point was not content with the facts of the case. They were digging out every little detail they could find about the private life of the Talwars whether or not it was relevant to the case. One channel aired an MMS clip of Aarushi; a 17-year-old friend was named by the police and his mobile number was flashed on news channels. An "other woman" was shown depicting as if there were incidents of marital infidelity. Friends, family and domestic staff were trapped and questioned mercilessly. The media relied on anonymous sources and rushed to showcase it before someone else beat them to that.⁴¹

The Talwars were demonized and defamed in almost every show and every article. Therefore, when Rajesh was assaulted with a meat cleaver inflicting serious injuries, many applauded the act while a senior columnist went on to write: "Tough luck, Talwar".⁴² Nupur Talwar (Aarushi's mother) was taunted for not crying enough during an interview on national TV.⁴³ The parents were finally acquitted in October 2017, but no one would ever be able to feel or describe the trauma they have suffered. The media became successful disrupting the peace of this couple for almost 10 long years, like they did not agonize from their daughter's loss already. The longer it took for the case to be satisfactorily solved, the longer media lived off it in the most incredible manner possible.⁴⁴

The infamous Dhananjay Chatterjee⁴⁵ rape case has now sparked news of the death sentence given to the accused as being erroneous, after three professors from ISI, Kolkata carried out extensive research on the case and published it. Their detailed report questions every aspect of the case and also hints that the girl's mother itself could be the culprit. The Supreme Court in 2013 also pointed

⁴⁰Shohini Ghosh, *Mistrial by Media*, INDIAN EXPRESS, (Aug 21, 2020, 10:44 AM),

<https://indianexpress.com/article/opinion/columns/mistrial-by-media-aarushi-talwar-murder-case-4889249/>

⁴¹ Sandip Roy, *How Not to Report a Murder: The Aarushi Talwar Case Is A Textbook Example*, HUFFPOST (Aug 20, 2020, 11:00 AM), https://www.huffingtonpost.in/2017/10/13/how-not-to-report-a-murder-the-aarushi-talwar-case-is-a-textbook-example_a_23242412/

⁴²*Id, supra* note 4.

⁴³ Shoma Choudhary, *Aarushi Talwar murder case verdict is a chance for cops, courts and media to say: never again*, DAILY O (Aug 25, 2020, 4:30 PM), <https://www.dailyo.in/politics/aarushi-talwar-murder-case-rajesh-nupur-talwar-hemraj-injustice-media-trials/story/1/20055.html>

⁴⁴*Id, supra* note 11, at page 5.

⁴⁵ Dhananjay Chatterjee v. State of W. B., 1994 SCC (2) 220 (Before the Supreme Court)

out that the police investigation, in this case, was not carried out well and the “criminal test” was not prima face satisfied.⁴⁶

The media had begun their parallel trial before the actual trial began. Local and national newspapers sensationalised the matter and demanded justice for the girl. Dhananjay’s conviction was solely based on circumstantial evidence after which, the electronic and print media went frenzy to the extent that the whole event took on the feel of reality television. Many have said that Dhananjay could not defend himself well because he was poor and could not afford a good lawyer. There were daily interviews with a very harassed and traumatized family of Dhananjay and Nata Mullick, the hangman who was now a celebrity.⁴⁷ Famous personalities belonging to various sectors were invited to provide their views on capital punishment. The media ran constant opinion polls among their viewers and readers; published hour-to-hour news of Chatterjee’s life in jail; there were programmes graphically detailing the methods of hanging and his eating habits were extensively highlighted. His favourite music, reading habits, and every other conceivable aspect of human life was publicised. Even before the actual hanging could take place, this theatre of cruelty had developed into a public event.⁴⁸ An unfortunate result of all this was that at least three awestruck children died in mock enactments of the hanging.⁴⁹

These cases display sheer injustice caused to many individuals. The trials serve no informative or educational purpose (Barber, 1987). Gerbner (1980) has argued that, since an important media function is the reinforcement of existing attitudes, televised trials, which are so lurid and sensational, add to the existing negative impressions about crime and justice through their portrayals.⁵⁰

The usage of catchy headlines is a way through which the media attracts its viewers. Reporters habitually speak of news as to be "shocking or containing "disturbing new revelations." This subconsciously tells a viewer or a potential judge about how they should feel about a particular incident. Also, much news these days contains not only the facts of the story but also includes their analysis of the issue. A commentator on the news concludes the facts and their possible meaning and speculates about what will happen in the future. This has stemmed from media trials in the O. J. Simpson⁵¹ case, where conclusions were made every day, if not at every break in the trial, about who was winning.⁵²

⁴⁶*You were wrong, My Lords*, THE TELEGRAPH (Sep 10, 2020, 9:09 PM), <https://www.telegraphindia.com/7-days/you-were-wrong-nbsp-my-lords/cid/1314002>

⁴⁷ Anant Bhan, *Killing for the State: Death penalty and the medical profession: A call for action in India* 18 THE NATIONAL MEDICAL JOURNAL OF INDIA 207 (2005)

⁴⁸ Baidik Bhattacharya, *Public penology: Postcolonial Biopolitics and a Death in Alipur Central Jail, Calcutta* 12 POSTCOLONIAL STUDIES 9 (2009)

⁴⁹*Id*, *supra* note 47, at page 207.

⁵⁰*Id*, *supra* note 9, at page 299.

⁵¹*People of the State of California v. Orenthal James Simpson*.

⁵² Richard Gabriel, *This Case Is Brought to You by...: How High-Profile Media Trials Affect Juries*, 33 LOYOLA OF LOS ANGELES LAW REVIEW 728-729 (2000)

Many times it happens that the case is followed by the public in its initial stages, and eventually, they lose interest in the same case, as it drags on for years. In such cases, the public feels that justice is denied because justice has been delayed. In the cases of media trials, the media not only projects the case in an interesting manner but also apparently imprints upon people that justice has been done by declaring a person innocent or guilty.⁵³

The ongoing matter of Sushant Singh Rajput reveals no less about the evils of media trial. After his death, the initial instinct of the media was to target Bollywood and “movie mafia” for the actor's death and so they did. A week later all attention moved to Rhea Chakraborty, his girlfriend. Since then, it has been a sight of blatant violation of human rights everywhere. Consistent interference by the media and the trials did not stop even though CBI had taken probe. News channels declared her as a convict; they brought her private chats in the public domain, showed confessions made by her, and also carelessly shared her phone number. Extensive interviews were carried out with her family members and friends who do not have/ have the slightest connection with the case. More recently, she was mobbed by close to a hundred reporters while entering the Narcotics Control Bureau, not to mention that it happened amid Covid-19 with no adherence to social distancing.⁵⁴ Reporters also went to the extent of approaching Rhea's family and friends to their homes and even worse, setting cameras outside their houses to get a glance at their personal lives. This matter has been completely sensationalised and dramatized solely to gain TRP's, by adding headlines and phrases like “paisa, paisa aur paisa aakhir ye pyaar kaisa?”, “bol rhea bol”, “bhai ganja bhej” and many others. News channels conducted heated debates almost every night. Now that the said accused is arrested and in jail (not even for what she was initially accused of), media houses were seen making “news” out of her life in jail, sharing details about her daily meals. The Right to Privacy of Rhea has been violated at every level, and to make matters worse, the crowd on social media platforms made insensitive memes based on half-baked information. Eventually now, the matter has started fading since the AIIMS have confirmed that the actor's death was indeed, a case of suicide and not murder. It can be concluded that even after facing intense criticism on parallel trials run in the Aarushi case, there is no fear and no lessons learned by the media.

It stands as a duty of the media to ensure that they publish the dismissal of charges against or acquittal of anyone about whom they had previously reported in a negative light. However, it has been noticed, that the judgments rendered by the courts do not receive the same publicity and exposure as accorded to the launching of prosecutions and raids conducted, which is unfortunate as the public is not aware of the final outcome of the case.⁵⁵ All of this comes down to stating that the public should not be misguided, deliberately or inadvertently in a way that may prove to be harmful. The media needs to be vigilant of the consequences that may arise because of its

⁵³*Id, supra* note 6, at page 147.

⁵⁴*Rhea Chakraborty gets mobbed by media as she arrives at NCB, Richa Chadha says 'social distancing jaae bhaad mein'*, HINDUSTAN TIMES (Sep 11 2020, 11:35 AM), <https://www.hindustantimes.com/bollywood/rhea-chakraborty-arrives-at-ncb-office-for-questioning-in-drugs-case/story-d1BVfOizANdIQb4do2TdOP.html>

⁵⁵ Anand Singh, *Social Change through Trial by Media and its Impact on Judicial Administration: An Empirical Study of Law* 29 JOURNAL OF NATIONAL DEVELOPMENT 162 (2016)

irresponsible way of functioning. They should try and stick to reporting; their own views may be presented in subtle and neutral manner.⁵⁶

SOCIAL MEDIA TRIALS

A recent addition to parallel trials by news channels and print media is the menace of social media. Top sites Facebook, Instagram, and Twitter with millions of users allow individuals to post their opinions with a few clicks, anywhere, and at any time.⁵⁷ Trials on social media are mainly characterized by putting up accusatory and strong opinion based posts, stories, statuses, tweets, etc. Many others come across these posts and spontaneously repost the same without any clarifications. Entertainment pages also follow suit end up making memes on the matter to gain traction. By the time posts of clarifications, if any start making rounds, the damage is already done. News on social media spreads like wildfire, especially if the issues are raised by influential pages/ accounts. In fact, nowadays, mainstream media itself picks a lot of their content from viral news on social media.

Three years ago Dr. Pradhan, a leading academician in Delhi was subjected to virile accusations and abuse on Facebook after a former member of his family and a leading politician from the opposition came together as a couple. Both Pradhan and his former family member were slut-shamed, trolled, and abused on social media, forcing him to completely withdraw from the platform. He said that both the virtual and real worlds are integral to each other and that the incident disturbed him in quite a few ways.⁵⁸ Journalist author Tavleen Singh also took up the matter of online trolling in one of her articles. She highlighted the case of Sunanda Pushkar, where Republic TV and its editor Arnab Goswami had declared that Sunanda Pushkar was murdered and that her husband was complicit. It led to Tharoor being judged and sentenced on national television followed with accusations and hate speech on social media.⁵⁹

Perhaps the most striking instance of social media trials is that of Sarvjeet Singh – Jasleen Kaur fake harassment case. Jasleen Kaur shared a Facebook post where she accused Sarvjeet of verbally harassing her at the Tilak Nagar traffic signal in West Delhi; the incident made national headlines. Media houses and social platforms used the opportunity to create sensational news after hearing only one side of the story. As soon as the news spread, the media channels called Sarvjeet a “pervert” and the woman’s bravery was applauded by Delhi CM Arvind Kejriwal and actress Sonakshi Sinha. He was arrested within a few days. However, before his arrest, he had put out his side of the story wherein he stated that on the said day there was a slight argument between them, he did not abuse her nor did he physically harm her. Sarvjeet was declared guilty by media trials.

⁵⁶*Id.*, *supra* note 25, at page 58-59.

⁵⁷ Taylor, Jacqui and Gemma Tarrant, *Trial by Social Media: how do you find the jury, guilty or not guilty?*, SEMANTIC SCHOLAR (Aug 21, 2020, 5:36 PM), [\[PDF\] Trial by Social Media: how do you find the jury, guilty or not guilty? | Semantic Scholar](#)

⁵⁸ Swati Arjun and Shikha Rai, *Crime by the Commons, Emerging Trend in Social Media* 8 JOURNAL OF CONTENT, COMMUNITY & COMMUNICATION 38 (2018)

⁵⁹*Id.*

He was named “Delhi Ka Darinda” by social media. The incident left him with huge losses emotionally, mentally, and physically. Financial losses were also incurred. He lost a well-paying job instantly, and could not find one for a long time because of his tarnished image. Sarvjeet finally has a job that pays him Rs. 12,000 (much lesser than his previous salary); he and his family have been recovering from the trauma.⁶⁰ After the truth was revealed, a former Times Now employee, who claims to have put out the story of the case has now apologised (in a personal capacity) to Sarvjeet. Actor Sonakshi Sinha, who had earlier backed Jasleen, also apologised to him.⁶¹ The Supreme Court has also voiced itself on trial by social media. While discussing a petition on the regulation of social media sites, Justice Deepak Gupta said “Nowadays people write anything and get away. There is no fear. Governments can still protect themselves. An individual whose reputation gets tarnished (through a comment or message) has the right to know who wrote the defamatory piece. He or she should be able to go to court, file a civil suit and seek compensation,”⁶²

A study⁶³ carried out by a student of Walden University on the influence of mainstream media on the criminal justice system revealed interesting answers. 450 attorneys registered to practice in India were its participants. They were presented with a few statements and had to answer with how much they agreed or did not agree with the same. Some of the statements included:

“Media can be used to complicate a simple case under trial.”

“I believe public media can influence judges’ perception of a case under trial.”

“I believe a judge handling a critical case changed his or her decision out of public media influence.”

“I believe intensive case analysis by media before completion of legal process influences judgment.”

“I have witnessed an offender receiving harsher sentence than required by the law due to Indian public demand through excess publicity.”, and

“I know a case in India that was unfairly ruled to gain publicity”.

⁶⁰Sylvester Tamang, *Sarvjeet Singh Might Have Been Acquitted But Verdict Shows How False Cases Ruins One's Life*, INDIA TIMES (Aug 20, 2020, 9:37 PM), <https://www.indiatimes.com/news/india/sarvjeet-singh-might-have-been-acquitted-but-verdict-shows-how-false-cases-ruins-one-s-life-500960.html>

⁶¹Ananya Bhardwaj, *I am ashamed: Ex-Times Now employee apologises 3 yrs after ‘molestation’ case*, THE PRINT (Aug 20, 2020, 10:03 PM), <https://theprint.in/india/governance/i-am-ashamed-ex-times-now-employee-apologises-3-yrs-after-molestation-case/114801/>

⁶² Bhadra Sinha, *‘Strike a balance’: Supreme Court’s advice to Centre on framing social media rules*, HINDUSTAN TIMES (Aug 19, 2020, 6:54 PM), <https://www.hindustantimes.com/india-news/strike-a-balance-says-supreme-court-to-centre-seeks-status-report-in-3-weeks-on-framing-of-social-media-regulations/story-djEnQ62Uue407iCMPZcagK.html> [emphasis added]

⁶³ V.V.L.N. Sastry, *Influence of Trial by Media on the Criminal Justice System in India*, WALDEN UNIVERSITY (PhD Dissertation) (2019)

The majority of attorneys responded to all of these statements in the affirmative. The legal fraternity is well aware of the problems caused due to trial by media and it is important that the general public also understands the same.

COMPARING THE LEGAL SCENARIO, DOMESTIC V. INTERNATIONAL

In the United States, freedom of speech is an absolute right unlike in India. Although they are still skeptical, they believe that pre-trial publicity does not adversely affect a fair trial. Therefore, the press is freely allowed to cover the crime and the trial. On the other hand, in the United Kingdom, a fair trial is ensured by restricting the flow of information. Under the Contempt of Court Act, 1981, the English courts have the power to prevent or punish conduct which tends to obstruct, prejudice, or abuse the administration of justice.⁶⁴

DOCTRINE OF POSTPONEMENT

India is yet to introduce regulatory laws for its dominating electronic media. In the Sahara⁶⁵ case of 2012, the apex court discussed about publications that would create prejudice and risk to the administration of justice. The court in this case granted a postponement order, temporarily preventing electronic or print media from reporting on the case. The point of law thus stands that, any person (accused or aggrieved) who genuinely feels that the content published infringes his/her rights under Art. 21 and right to a fair trial, that person would be entitled to approach the court and seek for order for postponement of that particular publication or broadcast. He will also be entitled to seek postponement of publication of certain phases of the trial (includes identity of victim, witness or complainant). The court would pass an order as it may deem fit, balancing the right to fair trial and freedom of speech. It should be borne in mind that postponement orders should be for a short duration and should be applied only in cases of a real and substantial risk of prejudice to the proper administration of justice or the fairness of the trial.⁶⁶ SC opined that journalists should know their 'Lakshman Rekha' so as to not cross the line of contempt.⁶⁷ Since then, the doctrine of postponement has been applied in various circumstances in India and is also widely used in the UK.

In May 2020, a PIL⁶⁸ petition was filed by Advocate Reepak Kansal in the apex court, seeking for a change in the constitution of the Broadcast Regulatory Authority of India. The aim of this was to regulate electronic media channels and facilitate the development of broadcasting services in the country. He has stated that until journalism was dominated by print media, it remained a positive force, but with the advent of electronic media, negative facets of journalism have appeared

⁶⁴ Justice R.S. Chauhan, *Trial by Media: An International Perspective* S-38 EASTERN BOOK COMPANY 8 (2011)

⁶⁵ Sahara India Real Estate Corporation. Ltd. v. SEBI, (2012) 10 SCC 603

⁶⁶ *Media Censorship by Courts in India: A brief history of the clampdown on media*, CITIZENS FOR JUSTICE & PEACE (CJP) (Aug 19, 2020, 2:16 PM), <https://cjp.org.in/media-censorship-by-courts-in-india/> [emphasis added]

⁶⁷ *SC imposes 'Lakshman rekha' guideline on media reporting*, INDIAN EXPRESS (Sep 9, 2020, 5:03 PM), <http://archive.indianexpress.com/news/sc-imposes-lakshman-rekha-guideline-on-media-reporting/1000982/>

⁶⁸ Reepak Kansal v. Union of India, W.P. (C) No. 000762 - / 2020

due to lack of statutory provisions and authority. The PIL also stated that electronic media is self-declared press and gets all perks and privileges given to Press. There is no statutory authority to check the illegal activities of these platforms and they end up violating the ethics of Media by blatantly assassinating the character of individuals and organizations.

The SC after hearing the matter in August 2020 has called upon the Centre to file a reply to the problem of unregulated electronic media. Besides asking the Ministry of Information and Broadcasting to reply, the apex court has also issued notices to the News Broadcasters Association, the News Broadcasting Standards Authority of India, and the Press Council of India.⁶⁹ The Court awaits for the reply of the Centre.

CONCLUSION

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. When the media continuously harps upon the guilt or the innocence of the person, it is possible that the mind of the judge may be affected. He may be deprived of clear, reasonable, rational, and legal thinking.⁷⁰ It has been consistently proven to be difficult for the courts to decide a case based on its merits when it is extensively dealt with by the media, causing a highly disturbed atmosphere.⁷¹ Judgments may suffer influence from information that may be irrelevant, that comes from media sources, newspaper reports, radio and television news, advertising, movies, and televised crime shows and courtroom scenes.⁷²

The Norms of Journalistic Conduct (2010) has clearly laid out that in a conflict between fair trial and freedom of speech, fair trial has to necessarily prevail because any compromise of fair trial for an accused will cause immense harm and defeat justice delivery system.

The Court in *Satyaveer Singh Rathi vs M/S. Zee Television Ltd*⁷³ has observed the same –

“It is, therefore, settled law that when a conflict arises between fair trial and freedom of speech, the former prevailed because the compromise of fair trial for a particular accused will cause them permanent harm whereas the inhibition of media freedom ends with the conclusion of legal proceedings. It is unthinkable to allow destroying the essential power and duty to protect fair trial of persons accused of crimes because this is an extreme form of 'trial by media' who usurps the function of the Court without the safeguards of procedure, right to cross examine etc. and such publications prejudice the facts and influence the Court, witnesses and others. By and large, while

⁶⁹SC seeks Centre's reply on PIL for setting up body to regulate news broadcasters, NEW INDIAN EXPRESS (Sep 9, 2020, 6:00 PM), <https://www.newindianexpress.com/nation/2020/aug/07/sc-seeks-centres-reply-on-pil-for-setting-up-body-to-regulate-news-broadcasters-2180432.html>

⁷⁰*Id, supra* note 6, at page 144.

⁷¹*Id, supra* note 26, at page 114.

⁷²*Id, supra* note 2.

⁷³ CS No. 324/2013 (Before the Supreme Court)

Judges may generally be impervious to influence, the possibility of such influence could not be ruled out altogether.”

Media, especially electronic media should act ethically while reporting news and try to present a neutral analysis of any case. An accused need not be constantly questioned/ interviewed by media or have his privacy violated by them. Instead of making the situation difficult, media could help out in simple ways to help the victims and their families, such as a) Giving a fair coverage to both sides of an issue, b) Avoiding publication of sensitive/ gruesome images, c) Dealing with the victims with utmost respect and dignity keeping in mind their mental state, d) Respecting the privacy of the families while they are grieving. E.g. funerals, e) Respecting their privacy and wishes in general, f) Not tainting the victim for gathering news material, g) Avoiding glorification of violent actions, h) Avoiding graphical details unless required, i) Showing of victims blood can be well avoided.⁷⁴

There is a dire need to regulate the electronic media which can be done by introducing the necessary laws in our country. Stricter punishments should also be prescribed for the Press Council of India if found be carrying out media trials. However, the regulation of content on social media is tricky because of the privacy policies of the various applications.

Nevertheless, while waiting for the required legal reforms, a few steps can be taken by the public to curb media trials. As mentioned earlier, TRP's of news channels are fuelled solely by us. We can avoid providing TRP's through silently boycotting and discouraging media trials simply by not watching them. This includes news where media is seen violating the privacy of an accused, conducting one-sided interviews, or heated debates. Instead, we can follow up on news through internet articles and newspapers. One may also openly boycott by using social media platforms to create awareness about the evils of media trial instead of sharing uncertified accusatory posts. It is crucial to understand that an accused is not equal to a convict. The curriculum of journalism courses should include learning thoroughly about the principles of fair trial, the principle of innocent until proven guilty, and the Right to Privacy. Simplified chapters on these topics should also be included in high school level curriculums so that children using social media at a young age understand certain concepts; they will encourage them to conduct their own research before reposting/ creating accusatory content. Internet usage has increased by 70%⁷⁵ due to the current pandemic and one ought to be careful about the content they post or come across.

Media plays an important role in shaping the opinions of society and it is capable of altering the whole viewpoint of the public. Social psychological research has shown that first impressions of people are formed as quickly as one-tenth of a second (Willis & Todorov, 2006) suggesting that

⁷⁴ Tulishree Pradhan & Shuvro Prosun Sarker, *Media Trial vs. Fair Trial: Are The New Media Reshaping Administration Of Justice?* 4TH INTERNATIONAL SCIENTIFIC CONFERENCE ERAZ 2018 AT SOFIA, BULGARIA 768 (2018)

⁷⁵ Ella Koeze and Nathaniel Popper, *The Virus Changed the Way We Internet*, THE NEW YORK TIMES (Sep 8, 2020, 6:16 PM), <https://www.nytimes.com/interactive/2020/04/07/technology/coronavirus-internet-use.html>

exposure to negative pre-trial publicity can rapidly lead to formation of a negative image of the defendant.⁷⁶Hence, unnecessary and derogatory trial by media must be put to an end to protect an accused as well as a victim. What is the point of having fundamental rights if they cannot be respected and protected in times of need, right?



⁷⁶Taylor, Jacqui and Gemma Tarrant, *Trial by Social Media: how do you find the jury, guilty or not guilty?*, SEMANTIC SCHOLAR (Aug 21, 2020, 5:36 PM), [\[PDF\] Trial by Social Media: how do you find the jury, guilty or not guilty? | Semantic Scholar](#) [emphasis added]