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Presumption of Innocence and Dilution of Facts by Media Trials

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ABSTRACT

We have all heard about the principle of presumption of innocence or “innocent until proven guilty”, a standard doctrine abided by the courts and all investigative and judicial authorities of the country. Back in the good old days, we had no option but to sit back and watch as a trial lived its due course of time, facts unfolded one after the other, witnesses stepped forward to testify, witnesses turned hostile, the accused almost failing to prove his innocence, and one new piece of evidence turning the whole case around. Cut to the twenty-first century, where one can only dream of a high-profile trial being kept away from opinions, criticisms and judgements of millions sitting in-front of the TV screens, a smaller screen in their hands, ready to press the “post” button, their unsolicited comment ready to be read, forwarded and absorbed forever by a phenomenal black hole called social media. Press and media, priding itself as the fourth pillar of democracy has now turned into a catalyst and instigator of public hate and open trials, breaching the sanctity of a judicial system that craves to look at the suspect before it with an impartial eye.

I. THE PRINCIPLE OF PRESUMPTION OF INNOCENCE

The procedure of justice is commonly and wrongly interpreted or incorrectly understood to be less complex than it actually is. The responsibility of abiding by the procedure established by law and using these tools of procedure to ensure that justice is administered in the best way possible without dilution in the form of doubt, is a heavy one. The weight of this responsibility can be seldom realized and felt by those who lie outside the process of justice or are mere spectators who sit on the other sides of the screens and don't think twice before pointing fingers and becoming judges in their own sense. Trials by media and plaintiff bias are real issues – more real than I'd like to admit to myself as I am, regretfully enough, a spectator and consumer of sensationalized content first, and a budding student of law, second.

The process of administering justice comes with a set of fixed, basic procedural and jurisprudential principles which are known to be as fundamental to the justice mechanism of

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our system and water is to a swimming pool. We call them the Principles of Natural Justice. Without abiding by these principles, no case can be said to have been disposed off in a fair, reasonable manner. The right to a fair trial – (i) *Nemo debet esse judex in propria causa*. (ii) *Audi alterem partem*, and (iii) Speaking orders or reasoned decisions – are the commonly recognized principles of natural justice.

Accusing a person of having committed a crime is an action which is more powerful than most people realize it to be. The human psychology, which itself works in ways tilting the bias of an audience in the favour of a plaintiff and rarely ever in favour of the accused. It, therefore, is extremely important for judge presiding over a case to remain neutral. The judgement and psyche of a judge should not be clouded by any prior bias harbouring in their minds. They must ensure that they take a call regarding the fate of the plaintiff and defendant solely based on the merits of the case presented to them during the course of a trial. It is just as important to protect and safeguard the reputation of an accused before a conviction by a competent court after hearing the case in length by the judge. The procedure which is established in the interests of justice and good conscience, is established for a reason. The decision to adjudged upon the guilt of an accused is a power which lies solely with the bench. Thus, it is not difficult to understand why concluding the guilt of an accused even before the judge has heard and adjudged the matter, is downright unfair and a sheer violation of an accused's reputation. It is in interest of protecting this treatment of an accused and ensuring a sense of neutrality in the minds of the judge as well as all the others involved in the judicial process, that an accused must be presumed to be innocent unless and until it is proven otherwise *beyond reasonable doubt* in a competent court of law. This is where the necessity of "Innocent until Proven Guilty" comes into the picture. Just because someone has named another person as being the culprit in crime does not alone entitle the accused individual to be treated as one who is guilty. The rules of natural justice mandate that this sort of discrimination and ostracization of the accused is prevented until and unless a case is made out and adjudged upon by a competent court against the accused. This is the primary difference between the terms "accused and "convict". The latter stands for an individual who, after having undergone the elaborate procedure of law, has been proven guilty of the crime alleged and charged with a sentence.

II. LEGITIMATE COMMENT VS. UNWARRANTED TRIAL

The role of the media – admittedly is the deliverance of facts to the public. Sheer facts, not opinions, not speculation, not insinuations, not inferences. When the media crosses this line

and takes it upon itself to become an interpreter of the law and facts instead of an institution that is tasked with dissipating information, it becomes problematic. In the recent past of India, there have been regrettably several instances when the TV News channels have taken up the task of holding discussions and deliberations on topics which fall way out of the purview of media houses in an unsolicited way. It takes it upon itself to adjudicate on the lines of what it believes to be justice. By means of holding discussions and debates so as to argue varying sides and interpretations of a story, one must not go as far as to interpret bare provisions of the constitution of our country – something which is the duty of our judiciary and not journalists.

Yes, as the fourth pillar of democracy, media has the freedom and should have this freedom of dissipating and conversing with the public at large, however, a line should be carefully drawn and it should be well aware of the effect that statements made by members of the media may have on the public at large. It is a basic tendency of a human being to read things out of proportion, especially when it is serving as great food for entertainment. The public will always gravitate towards loud, aggressive TV debates on sensationalized issues. On top of this, a major chunk of India's population being uneducated makes the target audience of the media all the more vulnerable to amplified issues, scandalous imagery, aggressive opinions, etc which are commonly broadcasted on a daily basis.

The essential difference is captured by the terms used in the Sidharth Vashisht judgment, “*informative expression*” and “*trial by media*”. Where the people are informed of news and views, it is a legitimate expression that cannot be restrained, however unpalatable it may be to some. When, however, the media either frontally or suggestively pronounces on the merits of a controversy at large in a court (often called the *sub judice* rule), it enters the province of courts. In criminal trials, if the media declares or builds public opinion on the guilt or innocence, it jeopardises the presumption of innocence, a right as important as free speech. Hence it is “trial” by the media, that it is neither competent nor permitted to hold.

III. THE CONTEMPORARY WITCH-HUNT: SUSHANT SINGH RAJPUT'S CASE

In India a criminal trial does not begin until a competent court has framed charges against the accused; and charges can be framed only after the police have concluded their investigation and have filed the investigation report (popularly known as a charge-sheet) before the court.² But from the perspective of an ordinary citizen our experience indicates that it would be fair to state that an accused is exposed to the criminal justice system the moment he or she is

² *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4.

‘allegedly’ accused of committing a crime i.e. a criminal complaint is made to the police or any other law enforcement agencies that has the power to prosecute. So far as the lives of ordinary law-abiding citizen are concerned, being accused of a crime is an extremely important and perhaps also extremely distressing event in his or her life.³

Right to fair trial and investigation is part of Article 14 and 21 of the Constitution of India and every citizen enjoys these rights. The same has been rightly reiterated in *Zahira Habibullah Sheikh v. State of Gujarat*.⁴ This right is usually hampered by media trials. It is a basic principle of criminal jurisprudence that “every accused is presumed to be innocent unless the guilt is proved”.⁵ However, the manner in which people accused of crimes are portrayed in popular media, and the consequences that these people have to suffer thereafter, in almost all cases notwithstanding the final verdict of the court of law, is and always been, a matter of concern for all democratic, republican systems based on a written constitution and rule of law.⁶

Recently the country has seen an uproar and shown its grave concern in the sensational case of the late actor, Sushant Singh Rajput on the issue pertaining to the Investigation and alleged mishandling of the latter’s unnatural death.

The media has narrated the entire story of the late actor’s death in a manner so to induce the general public to believe in the complicity of the person indicted. The media has gone a step further and published information based on mere assumptions and suspicion about the line of investigation by the official agencies to vigorously report on the issue on a day to day basis and comment on the evidence without ascertaining the factual matrix. Such reporting has brought an undue pressure in the course of fair investigation and trial. The media in this manner is conducting a parallel investigation and trial; and has already foretold its decision thereby, creating a pressure on the investigation agencies.

The freedom of press and media is not an absolute freedom and is subject to certain limitations contained in Article 19 (2) of the Constitution of India. The Supreme Court⁷ has rightly held that, “absolute, unlimited and unfettered freedom of press at all times and in all circumstances would lead to disorder and anarchy.” The media should be careful and should adhere to the norms and regulations prescribed by the Press Council of India and should also

³ *Tara Singh v. State of Punjab*, AIR 1951 SC 441.

⁴ *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

⁵ *Babu v. State of Kerala*, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179.

⁶ ‘*A Comparative Survey of the Law of Bail in India and Canada*’ by Khagesh Gautam & Sebastien Lafrance in the book titled “Taking Bail Seriously- The State of Bail Jurisprudence in India.”

⁷ *In Re: Harijai Singh and Another*, (1996) 6 SCC 466, AIR 1997 SC 73.

keep in mind the principles of natural justice and fair investigation in any case.

IV. JUDGE'S BIAS: IMPACT OF MEDIA TRIALS

In India, media trials have assumed significance. There have been several cases where the media had taken the case into their own hands and declared judgment against an accused contrary to fair trials in court. There have been quite infamous cases as well that outraged the public and impacted the Judiciary such as The Jessica Lal case (2010)⁸ where the media rejoiced over their efforts in bringing justice to Jessica Lal and the trial court had acquitted the accused of all the charges. The Priyadarshini Mattoo case (2006)⁹ where a law student was raped and murdered and the judgment of this case was suspected to have been influenced by Media Trial.

That time is gone when judges are not considered as social because it will harm their reputation. Now days Judges are social and being human beings, they care about their promotions and remunerations. In high profile cases they tend to be bias and give verdict as per as media reports just to be in lime light. this will surely help them to get a promotion before other competitive judges. Media is so much into our daily life's that judges too can't stay away from it and they usually tend to give verdict as per media reports.

V. WHERE THE MEDIA MUST DRAW A LINE

A democratic society's basic essence also lies in free speech prevailing one's ideas, propagating information and knowledge, debating on topics, expressing their views. Restraining individuals from expressing their social, economic and political views would be a bane to their fundamental right to express and speak. Undoubtedly, free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing viewpoints, debating and forming one shown views and expressing them, are the basic indicia of a free society.¹⁰

However, Media should restrain from forming an opinion by conducting its own parallel investigation and trial. Furthermore, the reporting of the alleged suicide of the actor by some of the newspapers is also in violation of the norms formulated by the Council for reporting on suicide. The norm prohibits publishing stories about suicide prominently and advises the media not to unduly repeat such stories¹¹.

⁸ *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1.

⁹ *Santosh Kumar Singh v. State*, (2010) 9 SCC 747.

¹⁰ *Union of India v. Motion Picture Association*, AIR 1999 SC 2334.

¹¹ Press Council of India, Norms of Journalistic Conduct, edition 2019.

The Hon'ble Supreme Court of India in *Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India*¹² while deciding the issue whether the court can frame guidelines for the visual media, observed that deferment of publication of such matters pending trial can be ordered. Even in the said decision also, the Hon'ble Supreme Court of India has declined to pass orders as to the framing of guidelines for the visual media. This is the need of the hour for certain guidelines to be framed for reporting of visual media.¹³ In cases of trial by media, justice is often not only denied but also derailed by reducing a tragedy into a sensational drama. The media write what people like to read, what makes for good conversation and reeks of controversy.

A clear testimony of this fact can be the fact that a case which started as an inquiry into the sudden demise (by suicide) of an actor, eventually has morphed into a full-fledged inquiry into the supposed “drug mafia” that runs in the Indian Film Industry. Actors, producers and directors are being accused, summoned for questioning, phones being confiscated for traces of drug supply related communications, etc. It even gave rise to a debate about the prevailing nepotism in the film industry, the so-called “mafia” gangs who are being credited and accused for controlling who is given work and who is not. These pieces of sensationalized prime-time news clearly indicated toward a questionable intention of the fourth pillar of democracy which instead of providing sufficient media coverage to other, imminent issues.

Individuals generally rely on media to provide information, as they cannot get sufficient information on their own to make informed decisions on public matters. Media is the cornerstone of our Indian democracy, which operates for the greater interest of society but legal process, should not be hindered by the media coverage of a matter. Trial is gravely affected by the Media sensation. Judges while making decision start considering Media criticism if they go opposite from the view of the Media that’s why in mostly high-profile cases verdict passes by media becomes the final verdict in trial courts.”

More often than not, especially in cases which provide media houses with the maximum TRPs, the media houses, in the name of investigative journalism, take it upon themselves to look into the merits of a case. They will interview suspects (Rhea Chakraborty was interviewed by a news channel), hold debates, make an appeal to the general public to make a judgement as to the guilt of the accused, collect evidence and parade it all on live news. There was a time when news channels were a rich source of information, keeping the

¹² *Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India*, (2012) 6 MLJ 772.

¹³ Aditya Talpade and Pratik Karande, *Media Trial: A Hindrance to Fair Investigation*, Latest Laws, 09.09.2020, <https://www.latestlaws.com/articles/media-trial-a-hindrance-to-fair-investigation/>.

residents of the country up to date with the happenings of daily important events such as the economy, international treaties, meetings, policies being proposed by diplomats, bills being passed in the houses of parliament, laws being deliberated upon by the legislature, etc. Basically, they were a place where citizens could be kept in the loop in regards to the functioning of their governments, their society, community, etc.

Unfortunately, this reality has today completely been transformed. News channels have now taken the role of another entertainment channel and prime time news, another daily soap opera. The channels will broadcast what the audience find entertaining and what brings them the maximum TRP, conveniently ignoring the more important and pressing events unfolding in the world which may need our direct attention. In the Sushant Singh Rajput death case, for example, there was a huge uproar on social media when the leading news channel failed to cover the Hathras Rape case as widely it covered the investigation and probe in the death of the late actor. Most news channels did not even broadcast it for more than 5 minutes a day. But they took the investigation into Rajput's death so very seriously, digging every tiny bit, debates about nepotism in the Hindi film industry (Bollywood) took over, slowly slipping into debates on nepotism in the Music industry with veteran artists like Sonu Nigam doing an exclusive interview regarding the same. The inquiry and debates, which began as investigation into the true nature of Sushant's death, over just a couple of months, transpired into a full-fledged inquiry into the drug racket of Bollywood. The media decided to disclose the names of actors suspected of using drugs naming Sarah Ali Khan, Rakulpreet Kaur, Diya Mirza, etc when nothing was proved against them and they were merely "suspects" it was sensationalized to no end and their photographs flashed continuously for days on all prime time tv news channels. Until today, nothing has been proved conclusively against them and they have had to face immense amount of ridicule from the public on their social media pages. People have called them names, given them death threats, threats of boycotting their films, etc.

VI. RIGHTS TO INFORMATION V. RIGHT OF THE ACCUSED: DOES THE PUBLIC REALLY NEED TO KNOW?

There has been an ongoing debate about how much of the information regarding topics like trials needs to reach the media and be covered by it. The right to information is a legal right available to every Indian, however, this right was accorded to people so that no authority could conceal important information from the public – information, the knowledge of which directly affects the rights of all citizens, for example information regarding the use of the

taxpayer's money, information regarding government schemes that directly benefit the consumer, the farmer, or the small business owner, or information regarding the allocation of resources by the government.

However, whether the media really needs to cover trials of a party in the guilt or innocence of whom the general public has no direct interest, is a question we need to ponder over. In my opinion, freedom of expression and media on one side, we really need to draw a line between media and right to live with dignity of an accused. There is no reason why an accused's identity should be revealed before a trial is over and the accused is convicted. If our judicial system is confident of the judgement and competence of the judges that it is made up of, we do not need thousands and millions of uninformed, biased and excited opinions pouring in from the entire world to adjudge upon the guilt of an accused.

EVERY SAINT HAS A PAST; EVERY SINNER, A FUTURE

“Are we, as humans, truly capable of being unbiased towards a rape accused?”

I, personally truly feel that we must ask ourselves this question before preaching how important it is for an accused to live a normal life. As a wise person once said that, ‘*every saint has a past; ever sinner, a future*’. It is important for we all, as a society to understand and embrace the fact that a human is capable of change, is capable of revising their values, learning lessons, implementing a new mindset in their lives at any time they want. It is never too late to alter one's motives and live a rejuvenated, refreshed life. Human experiences mould our outlook towards life and situations, but it is the process of expiating our wrongdoings which provides us with the time for contemplation and consequentially, a newer perspective on things.
