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Trial by Media: Undermining of the Indian Judiciary

LITY MANISHA¹ AND MEGHNA RAWAT²

ABSTRACT

In the recent times it has been observed that the cases are covered by the media beyond the limitations that they are provided with, they do take up matters Suo moto in their hands and extensively cover it creating a prejudicial mind-set in general. Media is one of the main pillars of democracy as it assures freedom of speech and expression as ensured through Article 19(1)(a) of the constitution but this right is not absolute and comes with certain reasonable restrictions as specified in Article 19(2) in concern to various purposes which includes contempt of court as well. Though the restrictions are provided in want of attention and TRP media houses have side lined the ethics of journalism in a way that they are affecting the minds of the judges as well as the public subconsciously. Though it cannot be denied that our media is the one which assures that we should be well informed but it should be done in an unbiased manner. Thus, steps need to be taken in order to draw a line, as unhealthy coverage is infringing the civil rights of the citizens and also is infringing the rights of the victim and the accused. Over involvement of the media through press, newspapers and social media is nullifying the whole idea of fair trial and affecting the privacy of the individuals disgracefully. Firstly, this paper discusses the history of medial trial in connection to freedom of speech and expression under Article 19 (1), in the next step the paper discusses the impact of trial by media on fair trial and the judiciary system and lastly this paper throws light on the mechanism of restriction on the media and to what extent it is being followed.

Keywords: Media Trials, Constitution of India, Freedom of Press, Reasonable restrictions, Contempt of Court.

I. INTRODUCTION

As known Media is acknowledged as the fourth pillar of Indian Democracy. Post-Independence the role of the media has been recognised and its scope has been widened. As through Article 19(1) of our Constitution, Media have been given responsibility to ensure fair speech and expression, creating awareness and shaping the view point of the society.

¹ Author is a student at Alliance university, Bangalore, India.

² Author is a student at Alliance university, Bangalore, India.

The major responsibility of the media is to keep the general public updated. Though Article 19(1) of the Constitution includes freedom of press, the line of the freedom is crossed in the recent times, as in most of the cases the media is taking a *Suo moto* detrimental coverage of the information with respect to the accused and the victim through different mass media modes. This not only has a deep impact on the personal and professional lives of the suspects, witnesses, accused and victims but also has a pre-judicial impact on the Judges and on the public at large.

In the recent times, it is quite evident from the Sushant Singh Rajput's Death case that how the media is piercing the personal lives of the accused as well as the deceased/victim, with its bizarre coverage which nullifies the whole principle of a fair trial, which states that- An accused is presumed innocent until proven guilty. In want of TRP the ethics of journalism is at stake. Due to the over information shared through different media houses the image of the accused is so defamed that they are not in a position to resume normalcy.

(A) Research Problem

In India, Media is acknowledged as the fourth pillar of democracy. It has an important role in influencing the opinion of the general public and which is why it is capable of changing the whole viewpoint through which people perceive various events. Article 19(1) (a) of the Constitution of India provides the right to freedom of speech and expression to all its citizens. The freedom of press is not specifically mentioned under the Indian Constitution, but this right is included under the ambit of Freedom of speech and expression. Further, freedom of press as a right is not absolute and is subjected to some reasonable restrictions as per Article 19(2). The freedom provided to the media is similar to any other freedom recognized under the Constitution and has to be exercised within reasonable boundaries. But due to increase of competition in the market for grabbing the attention of viewers and readers, the media has violated the right to a fair trial of the accused who in the eyes of the law is presumed innocent until proven guilty. Further, this has influenced the decision-making process of the judiciary. In recent times there have been a number of cases in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. Now, despite having restrictions provided under the Constitution on freedom of press they are still violating those restrictions and till now there is no specific guidelines or provisions mentioned anywhere to penalise them.

(B) Existing Legal Situation

Currently, the Constitution of India through Article 19(1) (a) provides for the right to

freedom of speech and expression which includes the freedom of press, but also, this right is not absolute and Article 19(2) states some reasonable restrictions upon the exercise of this right.

(C) Literature Review

- Nimisha Jha, “Constitutionality of Media Trials in India: A Detailed Analysis” 2015, Academike- The present article basically discusses about the role of media and the impact of media trials on the principle of fair trial. Further, Article 19(1)(a) of the Constitution of India provides the right to freedom of press.

- A K Mittal, “Trial by media and its impact upon judicial trial a critical study” 2016, Shodhganga@inlibnet- The paper focuses on the history of freedom of press and the trial by the media and its impact on the judicial trial. It further discusses about the need for a regulatory measure to stop the medial trials.

- Law Commission of India, “200th Report on Trial by Media”, August 2006- This 200th report by the Law Commission of India on Trial by Media discusses about the Human Rights Convention, the Madrid Principles, The Constitution of India and the Contempt of Court Act, it also states that how the publications in the media is affecting the judges’ decisions.

- Dr. S. Krishnan, “Trial by Media: Concept and Phenomenon”, March 2018- In the present paper the Author discusses about the evolution of press as well as the concept of trial by media. It also describes the impact of media trials on the freedom of speech and expression as guaranteed by the Constitution of India. Further, the impact of media trial on the judicial proceedings is also discussed in the paper.

- Arunav Talukdar, “Media trial and right to freedom of speech and expression: an analysis”, June 2018- The dissertation focuses on all the aspects of media trial, freedom of speech and expression and freedom of press in India. Starting from the role of media in a democratic country like India and its status in the country and then the misuse by the trial by media. It further discusses about the impact of trial by media on the public, minds of the Judges as well as the administration of justice in the country.

- Arun Kumar Singh, Anil Kumar, “Media Trials in India”- In this paper the Authors are discussing about the freedom of press and how this freedom was included under the Constitution of India. Thereafter, the situation of media trials in India is also explained and how these trials are violating the rights of the accused as well as the victims of any case.

- Bhaswat Prakash, “Trial by Media- A threat to our Judicial System”, December 2020- The Author discusses about status of Media in India and the misuse of freedom of press by media. The paper further focuses on the effects of trial by media on the justice delivery system which is a threat to the principle of fair trial.

- Nitesh Tripathi, “Media Trial: An impediment in fair trial”, 2018- The paper focuses on the impact of media trial on the public, accused, victims, judges as well as the administration of justice. Further, the paper explains that how trial by media is violating the principles of fair trial and has been working as a ‘public court’ also known as the Janta Adalat.

- Hon’ble Mr. Justice G.S. Singhvi, “Trial by Media: A need to regulate freedom of press”, October 2012- In this paper the author has discussed about the evolution of freedom of media in India and its inclusion under the Constitution of India. Further, the paper also mentions about the restrictions on media and suggests that there is a need to regulate the freedom of press to restrict them from crossing their boundaries by way of media trials.

(D) Scope

The study on “Trial by Media: Undermining of the Indian Judiciary” throws light on the history of media trials and the freedom of press as ensured under Article 19(1) of the Constitution of India as well as the role of the Indian judiciary in restricting the unfair trials by the Media.

(E) Objectives

- To study the history of media trials in India.
- To analyse the provisions with respect to freedom of press.
- To understand the limits and restrictions on media.
- To analyse the impact of media on fair trial.
- To understand the role of Indian Judiciary in restricting such unfair media trials.

(F) Research Questions

- What is the history of the media trial in India in connection with the freedom of press as provided under Article 19(1) of the Constitution of India?
- How trial by media is affecting the principles of Fair Trial?

- Why there is a need for a concrete mechanism to restrict the press from infringing the rights of the parties?

(G) Hypothesis

Trial by Media is infringing the concept of fair trial.

(H) Methodology

Academic research is important not only in defining the problems to be solved at both theoretical and practical perspectives but also in solving questions regarding how such problems may be resolved. This paper utilizes only one research method i.e. traditional legal method. The traditional legal method (also known as the legal dogmatic method) is commonly used in most fields of legal research. This method is normally understood as a way of interpreting, clarifying, evaluating and analysing applicable legal regulations in order to make clear theoretical and practical matters.

II. HISTORY OF MEDIA TRIALS

In the Year 1780, it was James Augustus Hickey who started the very first newsletter “The Bengal Gazette”³ in India. But in the year 1872, the newsletter was seized on the charges of defamation, as the newsletter criticised the British Government. After this newsletter, a lot more newspapers and journals emerged such as The Calcutta Chronicle, The Bengal Journal, Bombay Herald, etc. which troubled the officers of the British Company. To curb the press from disclosing the misdeeds of the British Company, they enacted the very first legislation in India known as the Lord Wellesley’s Press Act, 1799.⁴ The purpose of the act was to impose a restriction on the press through the provisions of pre-censorship under which every newspaper was required to be inspected by the Government Secretary and only after this inspection the newspaper was allowed to be published. Thereafter, a lot more acts were passed to restrict the press from publishing on different matters which in reality was inciting the Indian People against the British Government. In 1878, to restrict press from publishing papers in any other language which the British government could not interpret, The Vernacular Press Act⁵ was passed. Due to this restriction by the British Government on the Press, the Indian leaders understood the importance press and media in a Democracy and thus after Independence recognised the freedom of press and media in the Country.

³ James Augustus Hickey, “Hickey’s Bengal Gazette or the Original Calcutta General Advisor”, first English Newspaper published between 1780 and 1782.

⁴ Dr. S. Krishnan, “Trial by Media: Concept and Phenomenon” (2018) IJAE01/6745 <<http://dx.doi.org/10.21474/IJAR01/6745>> accessed 22 May 2021

⁵ Vernacular Press Act, 1878

In 19th Century, due to the introduction of photographs the level of media changed and there were photographs printed on the newspapers and soon after, due to the introduction of Digital technologies in the 20th Century the print media was promoted to digital media. Media is termed as the Fourth Pillar of the Indian Democracy and has helped the society to grow by informing them about the government policies, matters in the interest of the public etc. But now, Media has been turned into a ‘Public Court’ and is interfering in the court proceedings through their out of court proceedings known as Trial by Media or Media Trial.

Media Trial or Trial by Media became popular in the late 20th and early 21st Century. Roscoe ‘Fatty’ Arbuckle was the first celebrity to be tried by the Media in the 20th Century.⁶ In 1921, the case was filed against Arbuckle on the charges of rape and murder of an actress Virginia Rappe. Unable to reach at a decision in the first two trials, Arbuckle got acquittal in the third trial, where the jury wrote a formal apology.⁷ But due to the large scale coverage by the media he lost his job and he was banned from movies. It was in the year 1967 when the phrase “trial by television” got popularity from the show “The Frost Programme” which was telecasted on the television and was hosted by Mr David Frost. In this show the host not only questioned Emil Savundra about an insurance fraud but also infringed his right to a fair trial which resulted in affecting his life and career.⁸

Freedom of Press- Article 19(1)(A) of the Constitution of India

During a Constituent Assembly Debate on the question of making a separate provision for the freedom of press, Dr. B.R. Ambedkar said that- *“The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression; and in my judgment therefore no special mention is necessary of the freedom of the press at all.”*⁹ After this statement it was clear that Article 19(1) (a)¹⁰ which guarantees freedom of speech and expression will also include freedom of the press and thus there is no need for a special provision for the press.

“I would rather have a completely free press with all the dangers involved in the wrong use

⁶ Supra 2

⁷ Supra 2

⁸ Ibid

⁹ Constituent Assembly Debates, Volume VII, Page 780

¹⁰ Constitution of India 1950, Article 19 (1) (a)- All citizens shall have the right to freedom of speech and expression;

of that freedom than a suppressed or regulated press”¹¹

- **Pandit Jawaharlal Nehru (First Prime Minister of Independent India)**

In the year 1914, the Privy Council in the case of **Arnold v King Emperor**¹² stated that “*the freedom of the journalist in an ordinary part of the freedom of the subject and to whatever length the subject in general may go, so also may the journalist but apart from statute law, his privilege is no other and no higher*”¹³

Now, after the enactment of the Constitution of India in the year 1950, the freedom of press was not specifically mentioned under it. But, this freedom of press got the recognition through several case laws pronounced by the Supreme Court of India, which was based on the constituent assembly debate. Part III of the Constitution of India consists of a number of fundamental rights which is guaranteed to the citizen of India. Freedom of speech and expression is one of the fundamental rights guaranteed under Article 19(1) (a)¹⁴ which carries with it the freedom of press, as described by Dr. B.R.Ambedkar that the press cannot have special rights, as press is just another way of describing an individual or a citizen. The first case where the Supreme Court of India recognized the freedom of press under Article 19(1) (a)¹⁵ was of **Romesh Thappar V state of Madras**¹⁶. In this case the government of Madras banned the entry and circulation of an English journal named cross road which was printed and published in Bombay. The Supreme Court held that this restriction is violation of the freedom of speech and expression. It was further observed that “*Freedom of speech and of the press lay at the foundation of all democratic organization, for without free political discussion, so essential for the proper functioning of the process of popular government, is possible.*”¹⁷

Further, in the case of **Union of India v Association for Democratic reforms**,¹⁸ the Supreme Court of India stated that “*One sided information, dis-information, mis-information and non-information, all equally create an uninformed citizenry which makes*

¹¹ Hon’ble Mr. Justice G.S. Singhvi, “Trial by Media: A need to regulate freedom of press”, Bharati Law Review, Oct- Dec 2012 <<http://docs.manupatra.in/newslines/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf>> Accessed 27 May 2021

¹² Arnold v King Emperor (1914) AIR PC 116

¹³ Anand Singh, “Trial by Media and its impact upon the judicial trial: A critical Study”, (2016), Ch 1 Pg 44, <https://shodhganga.inflibnet.ac.in/bitstream/10603/229557/6/06_chapter%201.pdf> accessed 25 May 2021

¹⁴ Supra 8

¹⁵ Ibid

¹⁶ Romesh Thappar v The State of Madras (1950) AIR 154

¹⁷ Arunav Talukdar, “Media Trial and right to freedom of speech and expression: An Analysis”, 2018, p 22

¹⁸ Union of India v Association of Democratic Reforms (2002) 5 SCR 294

democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.¹⁹

In another case related to freedom press the Supreme Court of India stated that in any democratic country the role played by media is essential.²⁰ Also, it is the duty of the court nullify all laws and administrative actions which violate the freedom of press. The freedom of press basically consists of –

- i.* Freedom of access to all resources of information;
- ii.* Freedom of publication;
- iii.* Freedom of circulation;²¹

There are a lot of cases under which the Supreme Court has passed a verdict to support the freedom of press which was violated by different enactments. One such case was of **Sakal papers v Union of India**²² in which the freedom of press was violated by an order [daily newspapers (price and page) order, 1960]. Under that order the size and number of pages of a newspaper was fixed and the price was also controlled. The court held that this is a violation of freedom of press and does not come under a reasonable restriction provided under Article 19(2) of the Constitution. Another such case was of **Bennett Coleman & Co. v Union of India**²³ where the constitutionality of news print control order was challenged due to its provision which fixed the number of pages of a newspaper. The Supreme Court held that this restriction on the newspapers by any legislation or order is in violation of Article 19(1) (a)²⁴ as well as the freedom of press and held that order as unconstitutional. The court further rejected the contention by the Government which stated that this type of fixation in the number of pages will help the small newspapers to grow.

All the above-mentioned cases pronounced by the Supreme Court of India states the importance of Freedom of press in a democratic country like India. And now it is clear that the freedom of press flows from the freedom of speech and expression and is a fundamental right which cannot be restricted without reasonable restrictions mentioned under Article 19(2)²⁵ of the Constitution of India.

¹⁹ Ibid SCC 317, para 38

²⁰ India Express Newspaper (Bombay) P Ltd. v Union of India (1985) 1 SCC 641

²¹ Ibid

²² Sakal Papers v Union of India (1962) AIR SC 305

²³ Bennett Coleman & Co v Union of India (1972) AIR SC 106

²⁴ Supra 8

²⁵ Constitution of India 1950, Article 19 (2)- 2) 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

III. IMPACT OF TRIAL BY MEDIA ON FAIR TRIAL

Fair Trial forms a part of the fundamental human rights of a convict as well as a victim, alongside the witness. Right of fair trial is available at both the stages of the trial, but in the current era unfortunately media trials are violating the basic privacy rights of the victims and accused which is negatively affecting the mindset of the judiciary as well as the public at large.

In **Zahira Habibullah Sheikh and Ors. v State of Gujarat**²⁶ the Supreme Court in this case stated that “*each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which biased or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.*”²⁷

Parties are entitled to Fair trial through our constitution, wherein there should be uninfluenced press, impartial judiciary and tribunal set-up and no dictation of popularity. Denial of fair trial would amount to failure of administration of justice. Thus, a media trial would create a pre-judicial mindset which will ultimately lead to denial of a fair try.

Further, Trial by media has been recently coined as “*facet of media activism*”,²⁸ which in broad sense means the over information shared by the media through television, social media and newspaper adversely affects a person’s reputation by creating a comprehensive perception of guilt even before any verdict is passed by the Honorable court of law. Moreover, the unhealthy set-up created by the media in want of TRP especially in high profile cases is attacking the very dignity of the convict or the suspect and the victim like seen in the most recent case of Sushant Singh Rajput.

(A) Principles of Fair Trial: From Investigation to Trial

Our Judiciary system completely believes in the principles of fair trials. The first pillar of a fair trial is accused is presumed innocent until proven guilty. The idea behind this approach is, “*hundreds of guilty persons may get scot free but even one innocent should not be punished*”²⁹. Yet another safeguard that is said to be the heart of fundamental rights is

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

²⁶ Zahira Habibullah Sheikh and Ors. v State of Gujarat (2006) 3 SCC 374

²⁷ Nimisha Jha, “Constitutionality of Media Trials in India: A Detailed Analysis” 2015, Academike <https://www.lawctopus.com/academike/media-trials-india/#_ftnref43> accessed 29 May 2021

²⁸ Ibid

²⁹ Dr.Amit Kumar Ishwarbhai Parmar, “Right of arrested person under the Indian Constitution” , Vol-2, Issue-9

ensured under Article 21 of the constitution, i.e., right to life and personal liberty. Thus, right to fair trial is an absolute right of each individual within the territorial nexus of our state which has been broadly enshrined in Article 14³⁰, 20³¹, 21³² and 22³³ of the Indian Constitution.

Though, Media is an integral part of the system and freedom of speech and expressing is incorporated under Article 19(1) (a)³⁴ but it has certain reasonable restrictions³⁵ attached to it. Freedom of speech and expression should not be a cake walk on one's dignity and life.

(B) Media Trials and its Effects

Media is considered as the 'Fourth pillar' of a democracy. The primary aim of media should be passing on authentic and valuable information in concern to the socio-political and economic matters. Over the years, the scope of the media has enlarged and they have become a sole projector of information through newspapers, social media, news channels, magazines etc. Since, in the present-day digitalization plays a primary role in lives of both rural and urban population most of them are dependent on the electronic media and hence they have a capability to influence the minds and perspective of the them.

The fact that media in certain cases has played a vital role in bringing the accused behind the bars cannot be denied, but nevertheless the question herein is till what extent can the principle of free speech and expression under Article 19(1)(a)³⁶ expanded to undermine a "fair trial". In the present times media houses put aside the ethics of journalism and infringe the rights of the accused and the victim, and portray a biased opinion through there media trials and declare the verdict even before a judgment is passed. This not only is affecting the general public and the parties it is creating a pressure on the courts as well. Thus, there needs to be a clear-cut reasonable restriction on the role of media.

In crux, as rightly, stated by the Honorable Supreme court in *T.Nagappa v Muralidhar*, "An accused has a right to fair trial. He has right to defend himself as part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India".³⁷

PP.1425-1435, ISSN: 2394-5788, <http://gjar.org/publishpaper/vol2issue9/d317r39.pdf> , accessed 25 May 2021

³⁰ Constitution of India 1950, Article 14- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

³¹ Constitution of India 1950, Article 20- Protection in respect of conviction for offences

³² Constitution of India 1950, Article 21- No person shall be deprived of his life or personal liberty except according to procedure established by law.

³³ Constitution of India 1950, Article 22- Protection against arrest and detention in certain cases

³⁴ Supra 8

³⁵ Supra 23

³⁶ Supra 8

³⁷ T.Nagappa V Y.R.Muralidhar (2008) 5 SCC 633.

1. Impact of Media Trials through Case Laws

The over involvement of media can be traced back to the year 2008 wherein in each television screen the character assassination of the deceased Arushi was showcased along with the minute by minute picturisation of the crime plot by Dr. Rajesh and Dr. Nupur Talwar, who were the deceased parents. The media trial in this case were hyped to an extent that the accused were not in a position to prove their side, and much before the Hon'ble Court of Law could decide the accused were declared guilty through press and various other modes of media. The story not only had an impact on the deceased's family and the related parties but also had a greater impact on the public at large, as the perfect billion story portrayed by the media was morally and socially not acceptable. After years have passed, when the general public was expecting a better technology and a constructive coverage by media in 2020 with the case of Sushant Singh Rajput this came out to be a better circus with a wider compromise of the basic ethics of the journalism. After the news of the death of the Bollywood superstar Sushant Singh Rajput came out and subsequently the case was filed by the deceased's family against his girlfriend Rhea Chakraborty, alleging her of abetment to suicide. After this instance, misreported facts, lies, interviews have baked stories were flooded with an intention of sure entertainment. In order to justify their intentions the news channels telecasted provoking headlines like *"Rhea ne Sushant per kiya jaadu tona?"*³⁸

From sexist comments to character assassination, Rhea has been put through a wide spread social media hate campaigns which were pushed by the media channels. The right to privacy of the both the accused and the victim were widely infringed by the media, which is an absolute disregard to our Constitution.

- **JESSICA LAL MURDER CASE**³⁹-

This is a classic example of media reporting in a right spirit. Jessica Lal, who was a model and was also working as a bar attender was shot dead by Manu Sharma for merely just refusing to serve him alcohol as it was closing hours. Manu Sharma was the son of famous Congress Leader. The trial took place for nearly 7 years and he was finally acquitted in 2006. This is a result of fear, political pressure thus most of the witnesses turned hostile. As a huge number of witnesses were present in the party the acquittal led to a public outcry. Various press and electronic media by utilizing their freedom conducted a proper investigation,

³⁸ Prerna Lidhoo, "Arushi Talwar to Rhea Chakraborty: A tale of two media trials and zero lessons learnt"(The wire,01 September 2020)< <https://thewire.in/media/rhea-chakraborty-sushant-singh-rajput-aarushi-talwar-media-trial>> accessed 25 May 2021

³⁹ Manu Sharma v State (NCT of Delhi) (2010) 6 SCC 1

specifically 'Tehelka' magazine caught the witnesses accepting the pressure and the bribes enforced by Manu Sharma's father. Lastly, on the basis of all the evidences collected by the media and others Manu Sharma was convicted with a life time imprisonment in 2006.

- **AARUSHI TALWAR MURDER CASE⁴⁰**

In this case the media drew a conclusion even before the court and reported that the murder of Arushi Talwar was a pre-planned murder attempted by her own father Dr. Rajesh Talwar along with her mother Dr. Nupur Talwar. Throughout the investigation the reporters over crowded the crime scene by tampering the evidences. All the media channels widely telecasted about the alleged sexual relation of Arushi and Hemraj and also did not step back accusing the father for an extra marital affair. Moreover, this was an infringement of the privacy rights of the deceased as well as the accused. Sadly, this case was so hyped that both the parents were not given a mental space to defend themselves and as seen recently, all the charges against them were cleared by the Hon'ble Supreme Court. Herein the question arises after the character assassination conducted by the media trials will the parents ever get back to the normalcy.

- **SHEENA BORA MURDER CASE-**

In this case Sheena Bora, who was an executive working for Mumbai Metro went missing on 24th April, 2012. Shockingly in the year 2015 her mother Indrani Mukherjee, Step Father Sanjeev Khanna, and her driver Pintu Ram Rai, were arrested by the Mumbai Police. It was alleged that they abducted and killed her and subsequently burnt her. Long before she was proven guilty by the court of law, the media took the case to their hand and her character assassination took place. Her personal and professional life was digged by different media houses.

- **KHURSHID ANWAR CASE-**

In this case Khurshid Anwar got into depression after watching a video on a social networking site wherein a 23 year old girl alleged him for sexual assault. Since even in this case the video clip was telecasted in different channels and thus as a result of the same the deceased committed suicide by jumping off from the third floor of his residence. Yet again even in this case the media gave their decision even before the court of law and misused their freedom of press.

⁴⁰ Dr. Smt. Nupur Talwar v State of UP And Anr. On 12 October 2017

- **SUSHANT SINGH RAJPUT CASE⁴¹.**

In this case unfortunately the Bollywood superstar Sushant Singh Rajput was found dead in his apartment on June 14, 2020. After a month the deceased father Mr. K.K. Singh lodged a complaint against Rhea Chakraborty alleging her for abetment of suicide along with various other charges. One of the major charges was that of extorting money from the deceased on pretext of love.

“In this country, we consider the rights of the press to be of such level, the eminence that we do not want to curtail them. No statute can curtail them. That does not mean that there is complete lawlessness. There is a self-regulation that the press must have.”⁴²

- Supreme Court Judge Justice Uday U Lalit

The hon’ble Supreme Court in this case stated that the talented Actor died much before his potential could be realized. Therefore, there is a need for a fair and impartial investigation. Though there has not been any official statement that has been given by the investigating authorities and the court the media has been conducting a parallel trial from the very next day of the unfortunate death of the actor. The main stream media is convincing the viewers at large that the actor has been murdered and the accused is being harassed through trending hastags and campaigns moving round the social media. In this ongoing case the media trial is creating a biased opinion and is affecting the minds of the judges as well. Though we all want a fair and just investigation in this case nevertheless the fundamental rights of the accused and her family cannot be sidelined like done in this case.

2. Impact of Media Trials on the Subconscious Minds of Judges-

There are chances that the media trial can influence the judges. Publications and interviews that have a potential to have a negative impact on the minds of judges should amount to contempt of court. Though our competent judges fully rely on an impartial judicial mechanism but biased publications have a potential to influence the minds of the judges subconsciously. In **Re: P.C. Sen**⁴³, it was stated that *“genuine risk of prejudicial remarks made in newspapers or by any mass media which must be guarded against is the —impression that such comments might have on the Judge’s mind or even on the minds of witnesses for a litigant.”⁴⁴* Secondly, in the case of **Rao Harnarain vs Gumani Ram**⁴⁵, the

⁴¹ Mr. Nilesh Navalakha v Union of India (2020) PIL ST no. 92252

⁴² Financial Express, “Media must self-regulate when reporting on criminal trial, says Supreme Court Judge UU Lalit” (*Financial express*, 8 September 2018) < <https://www.financialexpress.com/india-news/media-must-self-regulate-when-reporting-on-criminal-trial-says-supreme-court-judge-uu-lalit/1307007/>> accessed 25 May 2021

⁴³ In Re: P.C. Sen (1970) AIR SC 1821

⁴⁴ Supra 15, P 45

court discouraged the practice of media trials, and observed that journalist should not act as an investigator when any case is pending before the court of law as it has the potential to influence the minds of the judges.

IV. MECHANISM OF RESTRICTION ON MEDIA

(A) Article 19(2) of the Constitution of India

Freedom of press as included under freedom of speech and expression is guaranteed under Article 19(1) (a)⁴⁶ of the Constitution of India. This freedom is not absolute and is subject to certain reasonable restrictions as provided under clause (2) of Article 19, these restrictions are on the freedom of the press which is in the interest of the security of the State, the sovereignty and integrity of India, Friendly relations with foreign states, Decency or morality, public order, defamation, for the prevention of contempt of court, or incitement to an offence.⁴⁷ These reasonable restrictions can be imposed by the state through its laws in the larger interest of the community.

1. Freedom of Press and Contempt of Court

The interference by media in the judicial process is termed as contempt of court and it is necessary that such an intervention should not go unpunished. The concept of contempt of court was introduced to prevent such type of unjust and unfair trials in which the right of the accused to a fair trial is infringed. There are basically two types of contempt of court i.e., civil and criminal which is defined under the contempt of court Act. Scandalising, prejudicial trial and hindrance in the administration of justice are the types of criminal contempt as defined under section 2 of the Contempt of Court Act, 1971.⁴⁸ In the case of **Subhash Chandra v S.M. Agarwal**⁴⁹, the court held that if a case is triable by a judge and it is pending for trial, in that scenario if someone comments on the same or abuses the party it will amount to contempt of court.

Article 129⁵⁰ and 215⁵¹ of the Constitution of India states that the Supreme Court of India and the High courts of states respectively are authorized to punish those who indulge in the act contempt of court.

⁴⁵ Rao Harnarain vs Gumani Ram (1958) AIR P H 273

⁴⁶ Supra 8

⁴⁷ Supra 23

⁴⁸ The Contempt of Courts Act, 1971, Section 2 (c)

⁴⁹ Subhash Chandra v S.M. Agarwal (1984) Cri LJ (Del) 481

⁵⁰ Constitution of India 1950, Article 129- The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

⁵¹ Constitution of India 1950, Article 215- Every High Court shall be a court of record and shall have all the

In the case of **Y.V. Hanumantha Rao v K.R. Pattavharam** and Anr⁵², the Andhra Pradesh High court stated that if a case is pending before a court no one is allowed to comment on the same so as to create a danger to the proceeding which will directly influence the Judge, the witness or the general public in a way will go against the party. It was further stated that even if an honest comment is made by a person who is true to his knowledge, it will still amount to contempt of court.

Further, in the case of **Leo Roy Frey v R. Prasad and Ors**⁵³, the court stated that if an article is offensive in nature, then its publisher cannot take the immunity of pre-trial stage.

Justice Shah while describing the concept of contempt of court in the case of **In Re: P.C. Sen** stated that “*the law relating to contempt of court is well settled. Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt court.*”⁵⁴

As per section 3, any publication which is before the trial it is considered as immune from the liability of contempt of court.⁵⁵ This immunity provides media with the freedom to broadcast and publish on the matters which are still on the stage of pre-trial, that means the trial has not yet started. These types of publications done at the pre-trial stage by the media affects the right to fair trial of an accused and violates the basic purpose of freedom of press. Therefore, to prevent such types of publication by the media there is a need for a proper framework which will change the idea of pending and will include the notion of arrest as the beginning of such immunity.

2. Recommendations by the 17th Law Commission:

Trial by media; free speech versus fair trial under criminal procedure (amendment to the contempt of courts Act, 1971),⁵⁶ is the 200th report by the Law Commission of India which has addressed the issue of media trial and criminal justice and then provided several recommendations for the same. The matter related to media trial came into picture after the extensive use of electronic media and print and their coverage of crime and information related to the accused and suspects. Due to these types of coverages by the electronic and the print media in the matter of criminal cases the prior publications have a detrimental effect on

powers of such a court including the power to punish for contempt of itself

⁵² Y.V. Hanumantha Rao v K.R. Pattavharam and Anr (1975) AIR AP 30

⁵³ Leo Roy Frey v R. Prasad and Ors (1958) AIR P&H 377

⁵⁴ Supra 41

⁵⁵ Contempt of Courts Act, 1971, Section 3- Innocent publication and distribution of matter not contempt

⁵⁶ Law Commission of India, 200th report on *Trial by media; free speech versus fair trial under criminal procedure (amendment to the contempt of courts Act, 1971)*, (17th Law Commission of India)

the judges, accused, suspects, witnesses and the administration of justice. As per the legal system of India, an accused is presumed innocent until proven guilty but the media is going against the fair procedure which was established by the justice system.

According to section 3 of Contempt of Courts Act, 1971 a complete immunity is provided to *“pre-judicial publication interfering with the court of justice in a criminal case, when on the date of publication there is no charge sheet or challan filed or no summons or warrant issues”*.⁵⁷ This means that a publication will amount to contempt only if a case is pending before the court. Due to this there arose a question with respect to regulating the law which will deal with such type of publications that is published on the date of arrest or suspects.

According to the Law Commission Report such types of publications are affecting the minds of the judges and the same has been accepted by the Supreme Court and the House of Lords. In the year 1961, a criminal appeal was filed where the Apex court held that an F.I.R cannot be treated as a starting point of a pending case.⁵⁸ Due to this judgment the pre-trial publications by the media got an exemption from the contempt proceedings if the publication was made after the F.I.R was filed. Further, in the case of **A.K.Gopalan V Noordeen**⁵⁹ it was observed by the Supreme Court that a prejudicial publication will be treated as contempt if it is made after the arrest of the accused or suspect.

- “The Law Commission recommended an amendment under Explanation to clause (2) of section 3 of the Contempt of Courts Act, 1971 to add a clause arrest in that explanation which will make arrest as the starting point of a criminal proceeding;
- further, it was recommended that under section 3 of the Act the word ‘active’ should be used in place of ‘pending’ of a criminal proceeding;
- the Commission further suggested inclusion of section 10A under which the subordinate courts will no longer have to make a reference to the High court in the cases of criminal contempt of court and one can directly approach to the High courts without even taking the consent of Advocate General;
- the Commission also recommended that the High courts must be empowered with the powers to pass postponement orders against the print or electronic media so that they will have to postpone the publication or telecast of the criminal case which is active in the court

⁵⁷ Supra 15, P 51

⁵⁸ Surendra Mohanty v State of Orissa (1961) CrI. App. 107/56

⁵⁹ A.K.Gopalan V Noordeen (1969) 2 SCC 734

of law. This will restrain the media from negatively affecting the rights of accused of fair trial;

- under chapter-9 of the report the committee has suggested several forms of act by the press which is pre-judicial with the administration of justice. Those are publication of confessions, publication of the character of the accused, publication which will have an adverse effect upon the merits of the case, Photographs identifying the accused, publication of evidence.”⁶⁰

(B) Press Council of India: The Regulatory Body

The press council of India was established by the Press Council Act of 1978 which is a statutory body and is concerned with preserving the freedom of press and maintaining and improving the standards of newspapers and news agencies of India. According to section 14 of the Act, the PCI is empowered with the power to warn, admonish or censor the newspaper, the news agency, the journalist or the editor or to object against the conduct of the editor or the journalist, if that conduct is against the journalistic ethics.⁶¹ This provision will be applicable only when the news has been published, this particular provision does not include any harsh punishment which lowers the effectiveness of the same. To achieve its purpose the press council of India has suggested a set of norms for the conduct of journalism. Further, the Press Council of India has the powers to restrict the media from publishing pre-judicial media reports. The PCI is the self-regulatory watchdog of the press, but this self-regulation is not enough to restrict the media from conducting its out of the court trial that is media-trial.

Due to lack of a stringent punishment the Press Council of India has failed to punish the media and control the trial by media. Also, the Press Council Act only talks about the print media and not the electronic media which is why the major purpose of the Act is not fulfilled.

(C) Need For a Concrete Mechanism

Despite having the reasonable restrictions under Article 19 (2) of the Constitution of India and the Contempt of Courts Act of 1971, there is still a lacunae in the framework and taking the advantage of this gap even in the present day the Media is over involved in criminal cases whether it is pending or is under trial in the court of law. In want of TRP, the role of media has transformed from being an information provider to conducting an out of court trial: through media trials. These trials are adversely affecting the parties of the cases along with the mind-set of the general public and the judges. Even after the recommendations given by

⁶⁰ Supra 55

⁶¹ The Press Council Act, 1978, Section 14- Power to censure

the 17th Law Commission of India in its 200th Report with respect to Media Trials and amendments under the Contempt of Courts Act, 1971, there are still persisting parallel trails conducted by the media due to lack of its implementation. Further, the Press Council of India has also failed in improving the Journalistic ethics. Which is quite evident from the recent case of Sushant Singh Rajput and Rhea Chakaraborty.

In the case of **Mr. Nilesh Navalakha vs Union of India**⁶², the Bombay High Court passed a judgement of 251 pages in view of the clusters of PIL filed against Media Trials in the recently most talked about case of Sushant Singh Rajput. The division bench consisting of Chief Justice Dipankat Dutta and Justice G.S. Kulkarni highlighted that, ***“Media ought to avoid reports touching upon an on-going investigation and present facts which are in public interest rather than what, according to the media, the public is interested in.”***⁶³

Referring to Nilesh Navalakha and Ors vs Union of India, the bench directed the print and the electronic media to hold back from publishing any news or post any debate or discussions or interview while reporting on cases which are particularly in the stage of investigation. Further, the judgement laid down an exhaustive list of reports which in its usual course tend to initiate a prejudice on the on-going investigation. The list consists of-

- “In relation to any matter of death by suicide, wherein it is depicted that the deceased had a weak character or any other personal details which will infringe the privacy of the deceased;
- secondly, the character assassination of the accused or victim creates an atmosphere of prejudice on an on-going enquiry or investigation;
- also, conducting interviews with the witnesses, victim, or the deceased family or any other members displayed on the big screen will create a pre-conceived notion;
- analysing the different sides of the cases through the witnesses, whose evidence could be crucial at the stage of trial;
- publishing a confession through print or electronic modes which has been allegedly made to the police in charge by an accused or a suspect and making the public believe that the piece of evidence is admissible before the court of law without making the public aware of the intricacies of the evidence act of 1872;

⁶² Supra 39

⁶³ Ibid

- printing and circulating photographs of an accused or related members thereby disclosing their identity;
- criticising the investigative departments on the basis of partial information without proper researches;
- pronouncing the decision of the case, including the guilt of an accused or any other individual not yet wanted in a case or otherwise;
- recreating a crime scene and portraying their own versions as to how an accused has committed the crime;
- predicting a course of action in relation to the steps that needs to be taken in order to complete the investigation;
- leaking sensitive and confidential information;
- giving a way to character assassination of any individuals related to the case which thereby would amount to defamation or hamper his reputation.’⁶⁴

At last, the bench while providing these guidelines stated that this is not exhaustive in nature, as they are indicative and any publication or report made by the press through print or electronic media needs to adhere to the Program Code, the Principles of Journalistic standard and the code of ethics and broadcasting regulations, along with the actions that can be taken under the prevailing mechanisms.

The above mentioned guidelines are in line with the recommendations that was given by the 17th law Commission of India in its 200th report, but still journalism has become a circus and implementation of these guidelines have failed. Thus there is a need for a concrete mechanism and a stringent restriction on media trials so that they adhere to the reasonable restrictions attached to the freedom of speech and expression and do not interfere with the principles of fair trial and administration of justice.

V. RECOMMENDATIONS

There are some suggestions which will help in restricting media from conducting unfair trial outside the court. These suggestions are stated after pointing out several lacunas in the laws.

- On the basis of the 200th Law Commission report there is a need to implement the recommendations suggested by the Commission which will help in preventing and thereby reducing the pre-judicial publications by media which is affecting the fair trial as well as the

⁶⁴ Supra 39

administration of justice. Therefore, it is required by the legislature to amend the Contempt of Courts Act, 1971 and thereby include the word arrest under section 3(2). This will mean that a pendency of the criminal proceeding shall start with the arrest of an accused, which will help the system in protecting the subconscious minds of the judges.

- Considering the cases such as Arushi Talwar, Sheen Bora, Rhea Chakraborty, the one thing that is common in all these is the misuse of the freedom of media, which has violated the basic privacy and human rights of victims as well as the accused. To curb this misuse of power by the media there is a need for specific framework of the guidelines with respect to protecting the identity of the accused and victims, which will also include their non-disclosure of photographs, their address, parents and relative details.

- As per the Press Council Act, 1978, which only deals in the print media, it is required to include electronic media under the Act as per the current situation.

- To protect the purpose of Press Council Act, the provision with respect to punishment needs to be properly framed because without proper punishment there is no way to control the trial by media.

- As a fourth pillar media is required to properly use its freedom as mentioned under freedom of speech and expression and should not express a biased opinion rather impart or express their views which will educate the general public and not harm and instigate them.

- Lastly, based on the recommendations given by the Bombay High Court in the recent case of Sushant Singh Rajput which has covered all the possible aspects of trial by media and to control the media from further out of the court trial and the pre-trial publications there is a need for the proper implementation of all these guidelines in a structured framework.

VI. CONCLUSION

Media plays an important role in the means of communication, it is an important part of democracy as it is responsible to pass on the authentic information and to keep the public updated about the social, political and economic activities going around them. Media is expected to adhere to its boundaries of freedom of press and deliver an unbiased information, news, facts, judgements rather than framing a biased opinion and subconsciously affecting the minds of the public and also the judges. It is disheartening to watch how in want of TRP the ethics of journalism has gone to bins and different media houses are interested in digging the personal lives of the accused and the victims, rather than providing the reasonable information. The mental trauma and the defamation caused by the media trials cannot be

taken back, if the accused are acquitted. The classic example for the same would be the Arushi Talwar case wherein a parallel trial was conducted by the media and their personal lives and other details were disclosed to such an extent that a biased opinion and a character assassination of the deceased and the parents framed a biased opinion which affected the administration of the justice. But in the year 2017, the Supreme Court acquitted the couple with clearing out all the charges, herein the question is the mental trauma and the defamation that the accused have been put through by the different media trials cannot be taken back and hence they can never get back to the normalcy. Since our justice system is based on the fundamental system of fair trial and the primary principle is that an accused is presumed innocent until proven guilty. But these media trials are nullifying the idea of audi alteram partem and is also infringing the right to privacy. Thus in order to restrict the media there needs to be a structured reasonable restrictions that needs to be imposed on the media.

VII. BIBLIOGRAPHY

Cases

- Arnold v King Emperor (1914) AIR PC 116
- Romesh Thappar v The State of Madras (1950) AIR 154
- Union of India v Association of Democratic Reforms (2002) 5 SCR 294
- India Express Newspaper (Bombay) P Ltd. v Union of India (1985) 1 SCC 641
- Sakal Papers v Union of India (1962) AIR SC 305
- Bennett Coleman & Co v Union of India (1972) AIR SC 106
- T.Nagappa V Y.R.Muralidhar (2008) 5 SCC 633.
- Manu Sharma v State (NCT of Delhi) (2010) 6 SCC 1
- Zahira Habibullah Sheikh and Ors. v State of Gujarat
- Dr. Smt. Nupur Talwar v State of UP And Anr. On 12 October 2017
- Mr. Nilesh Navalakha v Union of India (2020) PIL ST no. 92252
- In Re: P.C. Sen (1970) AIR SC 1821
- Rao Harnarain vs Gumani Ram (1958) AIR P H 273
- Subhash Chandra v S.M. Agarwal (1984) Cri LJ (Del) 481
- Y.V. Hanumantha Rao v K.R. Pattavharam and Anr (1975) AIR AP 30
- Leo Roy Frey v R. Prasad and Ors (1958) AIR P&H 377
- Surendra Mohanty v State of Orissa (1961) CrI. App. 107/56
- A.K.Gopalan V Noordeen (1969) 2 SCC 734\

Statutes

- Constitution of India 1950
- Contempt of Courts Act, 1971
- The Press Council Act, 1978

Online Journals

- Dr.Amit Kumar Ishwarbhai Parmar, “Right of arrested person under the Indian Constitution” , Vol-2, Issue-9 PP.1425-1435, ISSN: 2394-5788, <http://gjar.org/publishpaper/v>

ol2issue9/d317r39.pdf

- Anand Singh, “Trial by Media and its impact upon the judicial trial: A critical Study”, (2016), Ch 1 Pg 44, https://shodhganga.inflibnet.ac.in/bitstream/10603/229557/6/06_chapter%201.pdf
- Arunav Talukdar, “Media Trial and right to freedom of speech and expression: An Analysis”, 2018, p 22,
- Hon’ble Mr. Justice G.S. Singhvi, “Trial by Media: A need to regulate freedom of press”, Bharati Law Review, Oct- Dec 2012 <<http://docs.manupatra.in/newsline/articles/Upload/0158AEEE-1A16-473C-A41A-DB93A66000EB.pdf>>
- Dr. S. Krishnan, “Trial by Media: Concept and Phenomenon” (2018) IJAE01/6745 <<http://dx.doi.org/10.21474/IJAR01/6745>>
- Nitesh Tripathi, “Media Trial: An impediment in fair trial”, 2018 ISSN 2455-4782, <<https://jcil.lsyndicate.com/wp-content/uploads/2018/11/Media-Trail-4.pdf>>
- A K Mittal, “Trial by media and its impact upon judicial trial a critical study” 2016, Shodhganga@inflibnet <https://shodhganga.inflibnet.ac.in/bitstream/10603/229557/6/06_chapter%201.pdf>
- Nimisha Jha, “Constitutionality of Media Trials in India: A Detailed Analysis” 2015, Academike <https://www.lawctopus.com/academike/media-trials-india/#_ftnref43>

Websites and Blogs

- Financial Express, “Media must self-regulate when reporting on criminal trial, says Supreme Court Judge UU Lalit” (Financial express, 8 September 2018) <<https://www.financialexpress.com/india-news/media-must-self-regulate-when-reporting-on-criminal-trial-says-supreme-court-judge-uu-lalit/1307007/>>
- Perna Lidhoo, “Arushi Talwar to Rhea Chakraborty: A tale of two media trials and zero lessons learnt” (*The wire*, 01 September 2020) <<https://thewire.in/media/rhea-chakraborty-sushant-singh-rajput-aarushi-talwar-media-trial>>

Law Commission Reports

- Law Commission of India, 200th report on Trial by media; free speech versus fair trial under criminal procedure (amendment to the contempt of courts Act, 1971), (17th Law Commission of India)
