

Trial by Media – A Threat to Our Judicial System?

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ABSTRACT

It has been prepared after the deep analysis and study of the different, articles, papers, magazines, press release, books, interviews and some more other relevant resources. This Research Paper covers all the perspectives of the trial which is done by the media in certain cases and it also highlights whether it is good or not. It also shows the purpose and aspects of trial by media in many of the high profile cases such as Criminal, Political, and Scam and many more such cases which become a part of the Indian Citizens for their daily Entertainment and also a matter of Gossips. Modern world aims at latest innovations in mass communication media. Now the 21st century revolutionized the media world and this era witnessed a fundamental shift in the way we communicate from traditional print media like newspaper, and television and the modern media like social media. The driven force for all communication is the freedom of speech and expression under Art: 19(1) (a) of the Indian Constitution provides for freedom of speech and expression, by the virtue of this freedom media goes on reporting the news and publishing the articles based on the interview of the witnesses and other parties regarding the matters which are sub judice pending before the court of law and by doing this the media can cause prejudice to the case and affect the administration of justice which will lead to the miscarriage of justice.

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Media in high profile cases through conducting the investigations and continuous reporting of the news can create so much of hype on the sub judice matters that can cause prejudice and will affect the administration of justice and may lead to miscarriage of justice, the judge has to be impartial and shall pass the verdict only on the basis of the facts and the evidence produced in the court of law but the hype created by media prejudices the mind of judges and may force the judge to pass the verdict against the accused even though the accused is innocent.

This paper focuses on how such trial conducted by the media affects the right to fair trial of the accused and brings the conflict between the freedom of press, fair trial and independence of judiciary Trial by media shows the different aspects of the society and the community which at all directly impacts the Judiciary System of any Constitution and it can't be denied that the India itself is a big example for the same as it's the biggest sufferer in field of Judiciary by the act of Media Trial. Here you will also be getting different types of Case Study and their Judgement with respect to Trial by Media and how it affects Justice and also to the Case. You will also get to know about the Rules and Sections and also the stands of National and International Committees and Administration with the Issue faced by them due to Media Trial. The study indicates that many lawyers believe that there were instances where judges altered the judgment due to media influence and where "intensive case analysis by media before completion of the legal process" which impacted the verdict. It also says that "for a long time, India's criminal justice system has remained unenthusiastic about allowing unfettered media access to their functions and deliberations". People might suffer enormously when the decision-making process is vitiated by external factors of any kind. Research has been conducted on the intervention of media in cases under trial. The literature indicates that trial by media is a dynamic process through which people are exposed to public opinion where they are condemned without being heard.

KEYWORDS: *Media Trial, Justice, Judgements, Administration, Fair Trial, Prejudice, Sub - Judice, Constitution, India, National, International, Case, Victim, Accused, Innovation, Communication, Revolutionized, Media, Legal Fraternity, Public Interference, Court, Contempt, Judiciary, Broadcasting, Criminal, Articles, Sections, ICCPR, USA, UK, BBC*

INTRODUCTION

'Trial by media' is a phrase which is as equal as to the statement that who so ever controls the media controls the mind that has been used popularly in the last few decades to describe the impact of television and print media coverage on a case by an attempt made by the media of holding the accused guilty even prior to his trial and regardless of any verdict in the court of law. The criminal jurisprudence followed in India is based on the theory that an accused is entitled to fair trial and is innocent till proven guilty beyond any reasonable doubt. On account of exclusive coverage media goes a long way to cover and publish interviews of witnesses, victim's relatives, comments of the members of legal fraternity etc. which may cause prejudice to a trial proceedings in particular the judicial mind. In fact this affects the perception of public at large because media reaches out to the mass promptly.

In the last decade, we have witnessed rapid growth of media influence in the process of access to justice in plethora of cases relating to corruption, rape, murder, sexual harassment, terrorist activities etc. "Media activism imposes an indirect pressure on the adjudicating authorities to deliver justice to victims who may interfere with the trial proceedings and may cause prejudice to the accused and the chance of proving his innocence. Trial by media means the impact of the newspaper and television coverage on a person's reputation by creating widespread perception of guilt regardless of any verdict in court of law. Freedom of media in today's world is perceived to be the freedom of the People. Also, it is gratuitous to emphasize on the fact that every citizen has a right to be cognizant on all matters affecting them through media. Butties thought provoking that the media in the present day is such a powerful entity that it manipulates and builds public opinion as the word sit promulgates are presumed to be true without questioning its authenticity. Media overlooks the primary idea that governs trial in India which is "Guilty beyond reasonable doubt" and "Innocent until proven guilty".

In order to attract more viewers the media end up maligning and tarnishing the image of mere suspects and tagging them as guilty even before the judges.

Media by emphasizing on one-side delegations and taking the easy route of just fuelling the public outrage without trying to unearth the reality can be very damaging, which is barely considered by the media. Media has a great influence over the public of the country. Newspapers, News Channels, Radio and Television don't only spread the information but they also assist in controlling the stories which the public may discuss later. Crimes receive a wide coverage which makes it challenging for the prosecutors and attorneys. The judiciary and the media share a common bond and play a complimentary role to each other: man is the centre of their universe. While the media explores, discovers, and reveals the achievements and follies of man, the judiciary deals with the legal problems created by him.

Both the judiciary and the media are engaged in the same task: to discover the truth, to uphold the democratic values and to deal with social, political and economic problems. The media, in fact, has been called the handmaiden of justice, the watchdog of society; the judiciary, the dispenser of justice and the catalyst for social reforms. Thus, both are essential for the progress of a civil society. However, at times, these two pillars of democracy are at loggerheads.

Under the fundamental right of freedom of speech and expression, the media claims the right to investigate, to reveal, to expose and to highlight the criminal cases. According to it, in a democracy the people have the right to know. Therefore, the media has a corresponding duty to inform the people about the criminal and the crime. It, thus, demands the right to carry on pre trial publicity. Yet, on the other hand, the judiciary is keenly aware of the fundamental rights of the accused to a fair trial and of due process of law. Since pre-trial publicity can derail a fair and a speedy trial, the judiciary has to balance the competing fundamental rights. While the freedom of speech and expression of the media, the right to know of the people need to be protected and promoted, the right to fair trial of the accused needs to be secured and guaranteed.

Media is regarded as one of the pillars of democracy. It has wide ranging roles in the society. Media plays a vital role in moulding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Free speech and Expression is perhaps one of the most important and useful Rights available in our Constitution. Freedom of expression incorporated in The Indian Constitution under its Article 19(1) (a) grants freedom of speech and expression to its

citizens. The freedom of press is a necessary element of the freedom of expression that involves a right to receive and impart information without which democracy becomes an empty slogan. But this right is not absolute and is subjected to the reasonable restrictions of defamation and contempt of court among others mentioned in clause (2) of the above mentioned article, which clearly states that “this right can be restricted by law only in the interest 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.”

The media pushes people to prejudge the verdicts of criminal proceedings. Some people use the media to influence court case outcomes. In media trials, the media serves as a conveyor for popular sentiment. The media are also used to practice parallel elements of justice outside the confines of the courtroom. The media are a principal pillar of democracy across the world. The media plays numerous roles in society, including moulding social opinions and perceptions of specific events. In recent times, the media has played a role in pushing for the trial of accused persons. The media informs the public on matters of significance to it, meaning that a healthy and free media are critical to the working or functioning of democracy. Court proceedings that are covered widely by the media are concluded by the courts rather fast by and large.

What is Media Trial?

Trial is essentially a process to be carried out by the courts. The trial by media is definitely an undue interference in the process of justice delivery. Before delving into the issue of justifiability of media trial it would be pertinent to first try to define what actually the ‘trial by media’ means. Trial is a word which is associated with the process of justice. It is the essential component on any judicial system that the accused should receive a fair trial. India is a country where all the people have an upsurge of curiosity to know about the sensational and the high profile cases. People themselves start collecting information to lead the case in their mind and in this process the media by publishing their own versions of facts in the source of newspapers, news websites, and news channels pour water on the people’s thirst for these sensational cases. This is known as investigative journalism, which is permissible in India. The power of the influence and revolutionizing the mass in creating perception against a guilty or innocent mind is known by trial by media or media trial. Trial by the media is not merely a legal issue. It is also a political problem. On the one hand, it derails the lawmen

from the legal track. On the other, it also distracts the laymen, the ‘public in the republic’, from crucial issues like economic disasters, unemployment or the growing unfreedom. Authoritarian regimes always have invisible ministries for distraction which manifest through the media that they hire. Democracy requires perpetual vigilance.

Recently, Honourable Justice Kurian Joseph of Supreme Court of India while addressing Bar Council of India Meet at Chennai on 26-07-2015 citing pressure on the judiciary during the Nirbhaya rape case had remarked that Media Trials in pending cases should be avoided and thereby judges saved of the enormous strain created by it. "Please stop trying (cases) in the media till a case is over. Never try a case in the media, it creates a lot of pressure on judges, they are also human beings," Referring to "the amount of pressure that is built," he recalled how a judge who dealt with the case had once told him that "had he not given that punishment, they would have hung him." The Judge said "If I had not given that punishment they would have hung me, the media had already given their verdict, (like) it is going to be this only". He however, added, "He (the Judge who went into Nirbhaya case) had reasons to give the punishment, not because the media said it, but because he had reasons.

Trial by Media – Is it a Fair Trial:

Litigation is not always a search for truth. According to philosopher Charles Taylor, it is a “zero-sum game”, where the law only says “either A or B is right”. Media trials have always given rise to a certain kind of problem as it involves the tug-of-war between two different principles which are the free trial and the free press, both in which the public at large is generally invested. The freedom of the press is a part of democracy in any country. This is the kind of justification, given to investigative journalism.

But at the same time, the right to have a fair trial is a basic right that is given to every accused and the victim alike which is uninfluenced by any external source and is thus, recognized as a basic tenant of justice.

It does not consider the multitude of truth and complexity of events, issues or individuals. British Marxist Terry Eagleton put it in perspective: “Court rooms, like novels, blur the distinction between fact and fiction. The jury judge not on the facts but between rival versions of them.” (The Guardian, 25 May 2005) When trial by the court itself is inherently problematic in the adversarial system of justice, a media trial poses additional issues. Hate campaigns, accusations and witch-hunts impact the juridical process enormously. They also

contaminate the cultural and intellectual ecology of the nation. The trial by media in their own eye may be as fair as everything is fair in love and war because they work on this principle only. Media have the ability to cause a trial by media because the public look to media as a reliable source of information, this was also held by the English court in the Case Johnson, (2016 P. 381), therefore media acts as a public court or a Janta court where they decide the culprit soon before the commencement of the proceedings. The media by reporting consistently on a person who is convicted in a trial forces the public to make perception for that person as an accused, which results in the guilt of the accused before proceedings even begin. Hence, the trial by the media is not as fair as they have no power to interfere and to force the public to make an opinion against an individual. The media by doing the pre-trial interferes in the procedure and mechanism of the judiciary which is not permissible under any law or act.

Restrictions by the Constitution and the Contempt of Court:

Everything in this country has a limitation to its nature be it a right or freedom similarly, the freedom of speech and expression as guaranteed under Article 19(1) (a) of the Indian Constitution has also been restricted with some reasonable measures under article 19 (2) of the same act. The clause 2 of the article says that the state has the power to make any law to impose any restriction for the freedom of speech and expression and on the same page no one is allowed to use this right as against the sovereignty integrity and security of the nation, or against any friendly nation with other states or against any public order, defamation and incitement to an offense or decency or morality in relation with the court. The Constitution has provided these reasonable restrictions to safeguard other fundamental rights over one's freedom. The preamble of the constitution also mentioned that every individual has the right to live a decent life and to have a fair trial but the media is busy with their own trial process, they didn't care about the perspective or the opinion which will be created by their act or what grievance can be faced by the person against whom they have used their power.

Pandit Jawaharlal Nehru, the first Prime Minister of independent India said- "*I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press.*" But he did not foresee the danger involved as he did not expect the press to get involved into something which is beyond its limit and ethics too and which further hinders the 'administration of justice' which is the very essence of the natural

justice and the rule of law. Constitutionally, the press in India has no special rights, said Dr Ambedkar. But a free press is a political imperative for democracy to survive. In a criminal trial, the prosecution and the accused have the right to a fair trial. Between free speech and fair trial, the borders are sometimes crossed and the rules breached, leading to devastating consequences to individuals and institutions. The 'tele-terror' should not be allowed to meddle with a trial in accordance with the law. The digital violence in itself is a breach of peace. Media is an institutionalised anarchy, in a liberal and positive sense.

The media trial definitely falls under the ambit of the contempt of court. Thus, it should be made punishable. The right to a fair trial must be uninfluenced by the newspaper publications or even the headlines of the news. But what happens, when the leading news channels decide to go against the ethical code of contempt? Then decide to sabotage the career of the accused even before his guilt is proven in the court of law? They portray him as an evil person during the prime-time when all the viewers are generally geared in front of their television. It is important to note that the idea of democracy is fair play and transparency and by such an act of the media, the concept of democracy is at stake. Thus, any attempt made to sabotage the other pillars of democracy, by one of them, must be held as contempt.

Contempt of Court defined:

The remedy against such an act is the Sec.2 of Contempt of Court Act 1972. The Contempt of Court Act defines contempt as both civil and criminal. In M.P. Lohia V. State of West Bengal the Supreme Court strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the Courts. Saibal Kumar V. BK. Sen, the Supreme Court tried to discourage the tendency of media trial and remarked, "No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and published the details of investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that Contempt of court operates on a slightly different plane. The paramount considerations here are dignity of the court and fairness of trial. Hence it follows that once a case has reached the court no one is allowed to publish his own versions of facts. Violation of this rule amounts to contempt of court.

The rule evolved judicially which is supplemented by special statutory provisions, which prohibit the publication even of certain matters actually taking place in course of trial. Now the question arise is whether this negative approach of law is inconsistent with the constitutionally guaranteed right of freedom of speech and expression. In this connection it may be pointed out that the constitution in Art: 19(2) expressly save the operation of law of contempt of court. Such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.” The law of contempt is one of the grounds for reasonable restrictions under Article 19(2) to the freedom of speech and expression. While civil contempt refers to the wilful disobedience to any judgment or order of a court and criminal contempt is an offence under Section 2(c) of the Contempt of Courts Act, 1971, and is punishable by imprisonment of up to six months. It is defined as the publication of any matter which lowers the authority of any court, or scandalizes or tends to scandalize, prejudices or tends to prejudice, or obstructs or tends to obstruct any judicial proceedings, or the administration of justice.

Media Trials v. Judiciary:

There has been no legal system where the media is given the power to try a case. Every coin has two sides so is the case with media trials and journalism, at certain instances journalist portrays a pre- decided image of an accused thereby tearing his/ her reputation that can eventually affect the trial and the judgment, henceforth trial by media. 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.

The media can even influence the thinking-process of any individual. Like for an example times like this where COVID-19 has become a world pandemic the media and news channels every morning will telecast how many people died, number of new cases which automatically creates fear in a person's mind, whereas if the show number of recoveries this might motivate the public and help them fight the pandemic. Media changes the view of people which can have both negative and positive impacts. The media does nothing but just manipulate the people's mind.

Recently the country has seen 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. In connection to the case the court asked if the current mechanism for self regulation of the electronic media was enough to maintain a balance between rights to freedom of speech and expression and the right of the accused to a fair trial and reputation.

A division bench of Chief Justice Dipankar Dutta and Justice Girish S Kulkarni was hearing a PIL filed by eight former senior police officers from Maharashtra, as well as activists, lawyers and NGO’s seeking a restraining order against “Media Trial” in actor Sushant Singh Rajput’s death case. The court said that in the present case, ‘Substantial damage has been caused to the reputations of the persons so called involved’. “It takes year of hard work to build a reputation and with just one stroke it is brought from top to bottom. Without being punished, there is stigma on their forehead till the trial is completed, no matter if they are cleared of the charges”, the court said.

The court was prompted to make the observations after the advocate of one of the respondent channels submitted a report authored in 1947 by a European institute, which analysed options between self-regulation and statutory regulation for the media, and concluded that there was no need for government control. While clarifying that the channel was not guilty of the allegations made by the petitioners as it was not named by any of the petitions, advocate Ankit Lohia appearing for Zee News, however, said that he wanted make submissions in support of the contentions of other channels that there was no need for government interference in functioning of channels. He cited a 1947 report of a European institute and stated that the report had made it clear that the media should self-regulate instead of any statutory regulation.

Media Trial vs. Fair Trial:

Pre-trial publicity is injurious to the health of a fair trial. The media trials have also pressured the lawyers not to take up cases where the public deems certain individuals as guilty, without actually being proven due to the media trials, thereby forcing the accused to

withdraw his right to have an advocate. But, it also dissuades the advocates who actually take up such cases. The media has again come in focus in its role in the trial of Jessicalal murder case. The concept of media trial is not a new concept. The role of media was debated in the Priyadarsini Mattoo case and likewise many other high profile cases. There have been numerous instances in which media has been accused of conducting the trial of the accused and passing the 'verdict' even before the court passes its judgment. For example, in the case where the senior advocate Ram Jethmalani had defended the accused Manu Sharma in Jessica Lal's case, it was during this time, that one of the senior editor of a TV News channel had stated it to be a "defence of the indefensible", thereby, declaring that the accused was already guilty of the crime he had not yet been proven off. The assumption of the media clearly encroaches upon the right of the accused to have a fair trial as well as his right to have a good advocate.

Jessica Lal murder case i.e., Manu Sharma v. State (NCT of Delhi), the court held that despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defense of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

Recently in Dr. Shashi Tharoor v. Arnab Goswami and Anr, the court held that it is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence. In fact, presumption of innocence and a fair trial are at the heart of criminal jurisprudence and in way important facets of a democratic polity that is governed by rule of law. Journalists are free to investigate but they cannot pronounce anyone guilty and/or pre judge the issue and/or prejudice the trial. The grant of the fairest of the opportunity to the accused to prove his innocence is the object of every fair trial. Conducting a fair trial is beneficial both to the accused as well as to the society. A conviction resulting from unfair trial is contrary to the concept of justice.

Famous Indian Cases of Media Trial

There have been multiple cases which have been tried by Media, few of the famous cases have been discussed below-

In Printers (Mysore) Ltd. v. CTO the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of the press has always been a cherished right in all democratic countries and the press has rightly been described as the fourth chamber of democracy.

In R. Rajagopal v. State of T.N the Supreme Court of India has held that freedom of the press extends to engaging in uninhabited debate about the involvement of public figures in public issues and events. But, as regards their private life, a proper balancing of freedom of the press as well as the right of privacy and maintained defamation has to be performed in terms of the democratic way of life laid down in the Constitution.

Therefore, in view of the observations made by the Supreme Court in various judgments and the views expressed by various jurists, it is crystal clear that the freedom of the press flows from the freedom of expression which is guaranteed to all citizens by Article 19(1)(a). Press stands on no higher footing than any other citizen and cannot claim any privilege (unless conferred specifically by law), as such, as distinct from those of any other citizen. The press cannot be subjected to any special restrictions which could not be imposed on any citizen of the country.

Hamdard Dawakhana v. Union of India, "that the right includes the right to acquire and impart ideas and information about matters of common interest."

Sheena Bohra Murder Case

In the year 2012 Indrani Mukerjea was arrested for the murder of Sheena Bora, the shocking news, in this case, was that Sheena was the daughter, not the sister as claimed by Indrani Mukerjea. The media highlighted the case and even after her arrest Indrani never accepted that she had two children and was stuck to her statement claiming Sheena as her sister. The murder also brought into light the murky financial dealings of Indra Mukerjea and her husband Peter Mukerjea. They successfully manipulated facts hence no trail was initiated against them for three years. The personal life of Indrani Mukerjea had been pierced by the tormenting eyes of the media which paved the way for fresh debate in the murder trial issue of the accused. Indrani's character and personal life, all the aspects which have no ration with the investigation of the murder of Sheena were under the public lens of scrutiny through media. The journalism ethics had been again under the controversial debate due to their meddling with the personal matter of the accused.

The Tikku, Kakkar double murder case

This was a very sensational case where two Delhi residents were murdered by a money-crazy criminal and his female associate. Police said that Vijay Palande, prime accused and former gangster used his wife, Simran Sood, who was a model as a 'honeytrap' to commit the crimes for confiscating the victim's properties. In April, 2012, Palande along with his mates Manoj Gajkosh and Dhananjay Shinde murdered businessman Arunkumar Tikku who was a resident of Delhi.

The police said that Palande had encouraged the son of the victim, Anuj Tikku who was an actor with a motive that Tikku can acquire Palande's apartment which was located in the Lokhandwala Complex in Mumbai's upscale. The Mumbai crime branch had arrested the trio along with Simran Sood in connection to the abduction and murder of Delhi-based aspiring producer Karankumar Kakkad. Palande made a confession that he suspected Kakkad was an underworld mole, who would kill him, so Palande had to kill Kakkad. The police also said that Simran had acquainted Palande as her "brother" to Tikku and Kakkad. In 1998 Palande had been convicted of a double murder and then again in the year 2002, he jumped parole in 2003, went for a cosmetic surgery to Bangkok to change his features and in 2005 he returned to Mumbai.

In 2012, this double murder case shook the nation and made its way to TV and newspaper headlines as one of the most chilling murder mysteries in valuing a sophisticated serial killer in recent times in India. He was arrested for masterminding the murders of Tikku and Kakkar. On November 18, 2011, Palande was given a life sentence for the murder of the two men.

Stands by the Indian Court with Media Trial:

In India, the courts have the power to pass pre-publication or pre-broadcasting injunction or prior restraint order in sub-judice matters. The two-pronged test of necessity and proportionality has to be satisfied before ordering postponement of publication. Moreover, the injunction order should only be passed if reasonable alternative methods or measures would not prevent the said risk. Before airing any story pertaining to the plaintiff, the defendants shall give the plaintiff a written notice, by electronic mode, asking for his version. If the plaintiff refuses or does not reply within a reasonable time, he will not be compelled to speak and the story will be aired with the disclosure that the plaintiff has refused to speak to defend.

The Press Council of India Act, constituted a body named Press Council of India. It is a statutory

autonomous body. Its object broadly was to preserve freedom of press. The Council could warn, admonish, or censure a newspaper or a news agency for any professional misconduct, or breach of code of journalistic ethics, or offence against the public interest. It could also condemn the Government or other Organizations for interfering with freedom of press. It enjoyed the same powers, while holding an inquiry under Press Council Act, as are vested in a civil court while trying a suit under the Code of Civil Procedure. The Council could also ask a defaulting newspaper to publish the council's finding. The Council is empowered on complaints made it or otherwise, against offending newspapers [10]. The Press Council safeguards freedom of press maintains and improves standards of newspapers and news agencies. It is comprised mainly from the newspapers that are charged with the responsibility of regulating the conduct of brethren.

The Council has thus assumed the role of a self-regulating body of the newspapers themselves. The Council has the power to consider complaints suo moto; in addition to enquiry into complaints brought before it. It has empowered to make observation against authority, including Government, if it considers it necessary for the performance of its functions. Thus the Press Council is a statutory, quasi-judicial and self-regulating body without teeth (power to impose legal penalties). The power of Press Council of India is limited and increase in tendency of media sensationalism and competition among the newspapers which accelerated media to deviate from their traditional accountability and ethical values. Consequently the invasion on individual rights as well as collective rights is raising, thereby a need for a strengthened statutory body is need of the media world.

Stands of English Court with Media Trial:

The media all over the world has a greater impact on the public as they have the power to attract and manipulate the thoughts of the people by providing information to the masses by different sources. The situation of the media in English courts is similar to some extent. As Article 6 of the human rights act, the UN-based principle on the independence of the judiciary states that it is the duty of the judiciary to ensure that the judicial proceedings have been conducted fairly as well as the rights of both the parties have been respected. The principle is given in this article has been interpreted in the same language in the International Covenant on Civil and Political Rights (ICCPR), which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal" in the

determination of any criminal charge or in a suit at law. Whereas contrary to both the provisions provided under the human right act or ICCPR, the right to press or freedom of expression is also given under Article 10 and Article 19 respectively, but it also states that this freedom shall be paramount with the limitations and shall be made only up to the mark that is necessary for a democratic society. The media shall be in proportion to the pressing social needs only. U.S.A. & U.K. both believe in limitation of the power given to the media in publishing and casting these pre-trials. The U.S. Supreme Court stated that the media has the dangerous potential to impact the trials. In a landmark case Dr. Samuel H. Sheppard, the Court held that prejudicial publicity had denied him a fair trial. Similarly, in U.K. England in the case of Attorney General vs. British– Broadcasting Corporation (BBC) has agreed that media trials affect the judges despite the claim of judicial superiority over human frailty.

Madrid principles on the relationship between the media and judicial independence:

In January 1994, participants from 40 countries met in Madrid, Spain in a meeting convened by the International Commission of Jurists, the Centre for the independence of Judges and Lawyers, and the Spanish Committee of UNICEF. The purpose of the meeting was to examine the relationship between the media and judicial independence as guaranteed by the 1985 United Nations Principles on the Independence of the Judiciary. The other purpose of this meeting was to formulate principles addressing the relationship between freedom of expression and judicial independence. The preamble of this document lays emphasis on the Rule of Law and to prevail this rule of law freedom of expression especially the freedom of media becomes an important element in the Democratic society. This document imposes duties and responsibilities on both the judiciary and media. The basic principle that was laid down in the document is the freedom of expression which includes the freedom of media. It is the function and right of the media to gather and convey the information to the public and to make a comment on the administration of justice including cases before the trial, during the trial, and after the trial of the case. The basic principle is immune from any special restrictions and the scope of this principle is very vast.

Judicial remarks on Media Trial:

In the words of Justice Pathanjali Sasthri, it is stated that Art: 19(1) (a) is the foundation of all democratic institution. Without free political discussion public education is not possible. The free media is essential

for the proper functioning of democracy. Dr Ambedkar in his speech in Constituent Assembly Debates (Vol. VII 980) says “The press has no special rights which are not to be given or which are not to be exercised by the citizens in his individual capacity. The editor of press or the manager is merely exercising the right of expression, and therefore no special mention is necessary of the freedom of press.

Indian Constitution does not specifically mention the liberty of mass media. But the speech and expression covers the rights relating to broadcasting. The decision in Maneka Gandhi’s case reinforces this view. In this case it is held that “it is not correct view that the right which is specifically mentioned by name can never be a fundamental right or takes of same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of named fundamental right. The court declared that the day this clearing house closes down would toll the death knell of democracy.

Impact of the Trial by Media:

Media has now reincarnated itself into a ‘public court’ which can also be referred as “Janta Adalat” and has started interfering into court proceedings so much so that it pronounces its own verdict even before the court does. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’. Nowadays what we actually observe is a trial by media, where the media itself conducts a separate investigation, builds a public opinion against the accused even before the court takes cognizance of the case. By this way it prejudices the public, as a result of which many a time it could happen that the accused, which should be assumed innocent, is presumed to be a criminal leaving all his rights and liberty unredressed. When excessive publicity about a case and the suspect involved in the case by the media prejudices a fair trial or results in characterizing the accused as a person who had indeed committed the crime, it amounts to undue interference with the “administration of justice”, calling for proceedings for contempt of court against the media.

To an extent it can be agreed that the media, by publicizing certain facts, as it was best seen in Jessica Lall case acts as a catalyst which is conducive to the speedy progress of the trial and media activism of this nature is acceptable. However, once the trial has commenced, the media has no right to pronounce based on its perception the innocence or guilt of the persons involved in the case. Determination of the

guilt or innocence of a person under our constitutional scheme is the function of the courts, and not the media. Besides, irreparable harm can be caused to a person's reputation by prematurely judging him or her guilty.

Some of the Landmark Judgements:

Media has a totally different group of people to handle high-profile cases in the criminal justice system. This may also influence the way the trial procedure which includes the witness, evidence and important elements. I have focused my Research and my analysis on the following cases which show the influence of media on us and the criminal justice system:

1. P.C. Sen vs. Unknown (8th November, 1968)

In the case of re P.C. Sen, 1968, a special leave petition had been filed that a broadcast that had taken place on the night of November 25 1965, on an All India Radio station had been obstructive in the course of justice and had amounted to contempt of court as it gave out the details of the accused. Justice Shah stated that any law related to the contempt of the court is well-settled. Any act that is done or published to bring any Judge or the court to the ambit of contempt or which tries to bring down the authority of the court of that anything that tries to interfere with the proceedings of the law will be termed as contempt of court.

2. Y.V. Hanumantha Rao vs. K.R. Pattabhiram and Anr. (3rd September, 1973)

In the case of Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr, 1973, there was a curfew that had been imposed in a small district of Andhra Pradesh. It was brought before the court that the curfew that was imposed was arbitrary and that there was no law upholding the same. During this time, while the case was pending, the "Deccan Chronicles" had published about the law of curfew and why it was imposed along with its historical background and stated everything about the case. It was then it was observed that, when a litigation was pending in the court of law, there shall be no comments made regarding that litigation which may cause substantial danger of prejudice of any trial, for instance, the prejudice in the decisions given by the judge, the witness or any other general public having access to such media news. It was also stated in this case that, even if a person who publishes such news believes in his or her capacity for it to be true, it shall still stand as contempt of the court for the reason that this truth was established before the verdict given by the judiciary.

3. Sushil Sharma vs. The State (Delhi Administration) (1st May, 1996)

In the case of Sushil Sharma v. The State (Delhi Administration and Ors.), 1996, there was little evidence that the accused had murdered his partner. However, while the case was still pending in the court, the media had started portraying the accused as a murderer and was capable of changing the views of the public even before the decision of the case. It held by the High Court of Delhi that the conviction of any person would solely be based on the facts of the case and not because the media wanted the person to be declared as guilty. The charges also have to be framed against the person accused based on the evidence available on record and not based on what the media portrays the person to be.

4. Secretary, Ministry of Information and Communication vs. Cricket Association of Bengal (9th February, 1995)

The court give a wider meaning to freedom of speech and expression, which emphasized that every citizen has the right to telecast and broadcast to the viewers any important event through electronic media. Television and radio have also provided that the Government had no monopoly over such electronic media and such monopolistic power of government was not mentioned anywhere in the constitution or any other law prevailing in the country. This judgment thus brought about a great change in the prevailing broadcast media and such sector became open to the citizens. The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of speech and expression is necessary for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates of social and moral issues. It is the best way to find out the truest model of anything sincere which is only through it that widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy.

5. R.K. Anand vs. Delhi High Court (29th July, 2009)

The important questions relating to trial by media were examined by the Supreme Court. The case arose out of a sting operation carried out by a private television channel, NDTV to expose the unholy nexus between the prosecution, its witness and the defense in the infamous BMW hit and run case resulting in the death of six persons by speeding BMW car which was driven by the scion of a influential and wealthy family. While the trial was pending even after the

eight years of the incident, NDTV telecasted a sting operation to expose the manner in which a senior advocate appearing for the accused was negotiating with the help of special public prosecutor to sell out in favor of defense, the Delhi High Court then initiated the Suo-Moto contempt proceedings and held the special public prosecutor and the defense counsel guilty of contempt of court and they were debarred from appearing in the Delhi High Court and its subordinate courts for four months. Then the appeal was filed before the Supreme Court, it was contended that NDTV was guilty of trial by media and it could have telecasted the stings only after obtaining the permission of the High Court. The Supreme Court of India rejected the contention holding that such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. The Supreme Court held that NDTV was not guilty of trial by media and the phenomenon of trial by media was described as “The impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of the guilt regardless of any verdict in a court of law”. The Court dismissed the appeal of R.K Anand and issued him a notice for the enhancement of punishment.

6. Manu Sharma vs. State of Delhi (Jessica Lal Case)

It is also known as the Jessica Lal Murder Case. The case arose out of the cold blooded murder of a young woman in 1999. The woman was a bartender at a high profile restaurant in Delhi. The main accused Manu Sharma was a son of a powerful politician. The Delhi trial court in 2006 acquitted all the nine accused in the case. With regard to the acquittal there was a huge public dismay, the media launched a blitzkrieg on the manipulation of the trial through the political connections of accused, and the manner in which the witness turned into hostile, and the shoddiness with which the prosecution conducted the case. The media went on to report reactions from the public at the farcical failure of justice. As a result the Delhi High Court without waiting for the state’s appeal against the acquittal of the accused ordered a sue motto reinvestigation of the case. The retrial which took place mainly because of the pressure mounted by the media led to the conviction of accused who were acquitted earlier.

7. Nupur Talwar vs. Central Bureau of Investigation (Arushi Talwar Case)

It’s a case which involves the murder of a 14 year old school girl in her home, took tabloid journalism to a new nadir, in their scurrilous coverage of the investigation; the sections of media displayed a

brazen lack of concern for the law. The matter raised serious legal concerns which require redress apart from trial by media, violation of privacy, breach of confidentiality, and the defamation of both living and dead persons. The media pried into the personal lives of Aarushi and her parents, which published the private correspondence of Aarushi and the father of Aarushi was portrayed as a murderer. The victim’s parents have been framed for the murder of their daughter before the same was yet to be proved by the court. Due to the intervention of media which prejudiced the minds of judges, the parents of the victim were sentenced to life imprisonment and the parents of the victim have appealed against the conviction and then after hearing the appeal the Allahabad High Court acquitted the parents of Arushi Talwar and held that the CBI had failed to prove the guilt of the parents beyond reasonable doubt. Media has fetched a negative result in the case of Arushi Talwar by framing the parents of the victim for murder before the verdict of the court.

8. Sahara India Real Estate Corporation Ltd. vs. SEBI

Which is also known as the media guidelines case, the Supreme Court of India in 2012 constituted a constitution bench of five judges to consider whether the guidelines shall ought to be framed by the court in respect of the media reporting of the ongoing cases or reporting of the cases which are pending before the court, in this case there was an unauthorized leak of privileged communication by a private television channel and the communication was related to the settlement proposal exchanged between the lawyers on two sides.

The Supreme Court of India passed an order saying that “We are distressed to note that even without prejudice proposals sent by the learned counsel for the appellants to the learned counsel for SEBI has come on one of the television channels, such reporting by television channels not only affects the business sentiments but also it interferes with the administration of justice” the court ordered both the counsels to make a written application to the court in the form of interlocutory application, so that appropriate orders could be passed by the court with regards to the reporting of sub judice matters pending before the court, the Sahara filed an application complaining the unauthorized broadcast by the television channel and the Supreme Court of India opened a debate on media reporting of court cases on behalf of media houses and journalists.

The mysterious leak to the media sparked the confidential exchange between the lawyers in the case, snowballed into an open ended debate on media

transgressions and the need to rein it in with the guidelines. The Supreme Court of India while recognizing the media's right to report the court proceedings and recognizing the presumption of open justice held that there may be certain exceptional cases where the reporting by media might adversely impact the administration of justice, in such cases the reporting may be deferred for a limited duration by the Supreme Court or the High Courts, Such order of postponement must pass the tests of necessity and proportionality.

9. The Sheena Bohra Murder Case

After watching certain videos over YouTube, one gathers about that Sheen Bohra was a Metro Manger and was reported missing in April 2012. Months later the police took three individuals named Indrani Mukherjee(mother), Sanjeev Khanna (step-father) and Shyamvar Pinturam Rai (Indrani's Driver) into custody in the impression that they abducted her, murdered her and later burned her. Mother claimed that Sheena was staying in the USA and alive.

As per the videos uploaded over the internet the media has focused more on their personal life of the accused. The media even covered private information of the accused which was not relevant to the case. But since the time Indrani Mukherjee was arrested the media had concluded that she was accountable of murdering her daughter based on some circumstantial evidence way before the trials began.

10. Sushant Singh Rajput Case:

The Bombay high court did not mince words while pointing out to the fact that journalists today have lost their neutrality and the media has become polarised. The observations were made by the bench of Chief Justice Dipankar Datta and Justice Girish Kulkarni on Friday while hearing public interest litigations against the media trial in the Sushant Singh Rajput death case. The court was prompted to make the observations after the advocate of one of the respondent channels submitted a report authored in 1947 by a European institute, which analysed options between self-regulation and statutory regulation for the media, and concluded that there was no need for government control.

While clarifying that the channel was not guilty of the allegations made by the petitioners as it was not named by any of the petitions, advocate Ankit Lohia appearing for Zee News, however, said that he wanted make submissions in support of the contentions of other channels that there was no need for government interference in functioning of channels. He cited a 1947 report of a European institute and stated that the report had made it clear

that the media should self-regulate instead of any statutory regulation.

The chief justice made an observation on the submissions of Lohia and said, "We are ruled by the rule of law. In India there is a rule of law, right? How do you advocate that people who go around accusing others can find shelter of freedom of press? Journalists back then were responsible and neutral, now the media is polarised."

11. Jasleen Kaur Harassment Controversy Case:

The Jasleen Kaur harassment controversy stemmed from the accusation of sexual harassment made by Jasleen Kaur against Sarvjeet Singh in 2015 and the events that followed. In August 2015, Delhi woman Jasleen Kaur posted a photo of a man, Sarvjeet Singh, on Facebook and accused him of harassment. The post immediately went viral on Indian social media and garnered widespread attention. She received widespread support for raising her voice against eve-teasing and sexual harassment on social media including from national celebrities and politicians. Sarvjeet was arrested the next day and was bailed the day after. It was followed by Trail by Media in which Sarvjeet was labelled by terms like "National Pervert" and "Delhi ka Darinda" (Delhi's predator) on national news channels. A few days after the incident, an eyewitness vouched for Sarvjeet's innocence which brought credibility to Sarvjeet's account.

After four years, in 2019, the Indian court acquitted Sarvjeet of all the charges and he was held innocent. On October 24th, 2019, four years after the incident, the court passed the judgment. All the charges were dismissed and Sarvjeet was held innocent. He was acquitted of all the charges against him. However, during the time, the man had lost his job and couldn't find any other source of income due to such media coverage.

Question arises that whether a Media Trial: A Boon or a Curse:

From the above such Research, it has been clear that the media trials have had more of a negative impact than a positive one. The media has to be properly regulated by the courts. While a media which has been controlled by the government is not good for democracy, the implications and the result of unaccounted publications are even more damaging not just to the reputation of the person but also to the judgment imposed by the courts. Therefore, media trials have only served to help the people in only very few instances but that does not happen in all the cases, thus it is necessary to have restrictions imposed on it. Media, as referred to by many as the "eyes and ears of the general public".

It forms the backbone of our society. And a responsible media is expected to take into consideration the reliance entrusted on it by the general public and confidence and faith entrusted whereby common man/public blindly accepts the truth of the news published by media. This actually calls for the existence of a responsible media. No freedom, however sacred it may be, can be absolute. This is also true of press freedom. Not only the freedom of press is subject to the laws of the land, such as contempt and libel, but also is responsible to the society it serves. It should accept certain responsibilities in the discharge of its function.

The press has an obligation –voluntary and self-imposed that in presentation of truthful news and fair comment it adheres to certain norms of decency and decorum, and that it does not indulge in vulgarity, obscenity, character assassination, violation of citizen's privacy and incitement to offence, disorder and disintegration of the country. The media strongly feels bitter about this sub judice rule and complain that Courts during the course of a hearing tend to interpret the sub judice rule. However, there is an urgent need to liberalize the sub judice rule, applying it only in important cases that will likely influence the trial and not to any act that might have the remote possibility of influencing it. Another main constraint on stings and trials by media is the public interest. If public interest is missing and either self or manipulative interests surface, the media loses its ground and invites the rage of the court.

Norms that should be followed by the Media for any Media Trial to avoid any Issues on the Path of Justice under the Constitution:

While acting as a responsible media, it should follow certain norms in reporting of a crime or any news related to the same:

1. Accuracy of the case shall be maintained and verified before the same is reported/published and read of all.
2. Every caution shall be undertaken to avoid any writing that is opinion based i.e. either favoring or defaming any person/party.
3. Right to privacy shall not be interfered with.
4. Accuracy is of utmost importance while reporting court proceedings.
5. Reports based on mere suspicion or personal opinion shall not be published.
6. Appreciation of an act of violence shall be avoided always.

7. The heading shall not be purposely made sensational or provocative; it must be apt for the matter printed under it.
8. Rectification shall be published without any delay in cases of error.

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