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# Media Trial: A Tool to Sabotage the Fair Trial Principle

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## ABSTRACT

*In a democratic country like India, the media acts as a fourth pillar to provide transparency accountability, raise public awareness, and facilitate a forum for public discussion. The media is a one-way channel of communication that reaches the vast majority of the general public. It covers almost every issue and the subject of daily national/state/local affairs. It would not be inappropriate to say that people consider everything true they get to know through these media channels. But the truth of today's media is inept to be considered as the most important and efficient source of news and information. In a criminal justice system, the relationship between crime and media's perception is much important. The media plays an essential role in public policymaking. Further, its coverage of crime news stories also helps to set the agenda and reinforce support for punitive policies. In various cases, the apex court has opined that the media should observe restraint while reporting the case so as not to interfere with a fair trial. There are many cases where the media has performed public vilification of the accused and holds a parallel investigation. Today, the media is more focused upon the discovery of facts as a way of earning Television Rating Point (TRP) to gain more audience. They are less bothered about the credibility of the source. Nowadays, the media is violating all norms of ethical journalistic practice while reporting crime and investigation.*

**Keywords:** Media, Fair Trial, Media trial, Fundamental rights, etc.

## I. INTRODUCTION

*“Today, the media has reincarnated itself into a public court. The new media presumes guilt, and the victim must prove his or her innocence.”*

- **Sr. Adv. Kapil Sibal<sup>3</sup>**

The Constitution of India is the grundnorm, which guarantees several fundamental rights to the

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<sup>3</sup> OpIndia Staff, *Ram Jethmalani Memorial Lecture: India's top legal minds discuss 'trial by media' and the need for controlling measures to hold news channels accountable*, OP INDIA (Nov. 07, 2021, 08:11 PM), <https://www.opindia.com/2020/09/ram-jethmalani-memorial-lecture-indias-top-legal-minds-discuss-trial-by-media-news-channels-ministry-court/>.

people. These fundamental rights guaranteed to the citizens are the backbone of the Constitution<sup>4</sup> which cannot be infringed by the state or any other authoritative body. The right to privacy is one such essential right that is not mentioned in the Constitution of India explicitly but has evolved through various Supreme Court judgements under Article 21 of the constitution. The right to privacy generally means a right to be let alone or a right of a person to be free from unwarranted publicity and the right to live without undue interference by the government or any private individual in matters with which the public is not concerned<sup>5</sup>. This right guard the citizens by providing them protection from disclosure of their personal information and being informed before any such disclosure is made for review or making any corrections to the information.

When it comes to disclosure of personal information or any other information associated with any individual infringing the right to privacy, the tool which achieves the golden limelight is the different sources of media. Media as a medium plays a major role in the life of any individual by providing several different sorts of information from current affairs to B-town gossips to viral videos on social media sites to trials conducted in the courts of law to unveiling the faces behind any scam, all these types of facts and figures count as a daily activity of the media. Media as a source of communication is one that affects modern society to a great extent. It has been provided with several rights which flow with the duties binding them to certain boundaries under which they are bound to act and work. However, in an urge for increasing the television rating point (TRP), the mainstream media tends to violate the fundamental rights guaranteed to the citizens of the nation by conducting the trial at their own level, because of which there usually arises a conflict between the job of media and the rights guaranteed to the citizens. This conflict also led to creating disruption in an investigation by the law enforcement bodies as well as to the judiciary while dealing with any *lis pendens*.

Hence, this paper aims to understand and discuss the approach for coverage of the news as is affecting the fair trial principle of accused or suspected that overall led to violation of their fundamental rights. Further, the author will also discuss the extent of media trials concerning freedom of speech and expression. For this paper, the researchers have adopted a doctrinal method to determine the facts, situations and grounds related to the research topic. Also, the research is mainly based on secondary sources such as academic articles, books, journals, newspaper articles, other related online sources, etc., which are available relating to the concerned study. Further, the authors adopted the bluebook 19<sup>th</sup> edition technique to cite the

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<sup>4</sup> Kesvananda Bharti vs. State of Kerala, (1973) 4 S.C.C. 225.

<sup>5</sup> Nupur Sony, *Right to Privacy and its Infringement by Media*, 5 IJSRE 6757, 6758 (2017).

various resources of the related subject matter.

## II. EVOLUTION OF MEDIA TRIAL

The term media refers to various means of communication. These communications are the channels through which news, entertainment, education, data or any other related materials are disseminated. The term “media” has a wider ambit than the term press. According to the *Black law dictionary*, the term “press” could be referring “to one or more subsets of media, defined either by function or form. To the extent that existing law defines ‘the press’ at all, it does so mostly in terms of specific media forms.”<sup>6</sup> The media also exerts the most incredible influence on the public.

In India, the media derives their right from Article 19 of the Constitution. The constitution doesn’t expressly provide this right to media; howsoever, the apex court of India, with a span of time, included the “freedom of the press” in Article 19 (1) (a) of the Constitution. The court has connoted media as the most important estate of democracy and the fourth pillar of democracy. It helps the people in participating in any debate related to accountability, sustainability, reliability, good governance etc., of the other entities of the parliament. It has also been well observed that any institution may be subject to abuse if its freedom has not been restricted, and the same could lead to disorder and anarchy. Similarly, in the case of media majority of its campaign are positive, but the role of media as investigative journalism of matters *lis pendens* before the court is doubtful.

## III. ROLE OF MEDIA

Media is the fourth pillar of democracy which runs parallel to the administration of the justice system. It is granted with and has such an influential power that it influences the society with its views and even can affect the decisions of the court. It is the media that started with a ritual of taking an active part in bringing the accused to the hook. The power of media has increased with the advent of electronic media, wherein it can outreach the people with the help of several internet sources, radios, television, mobiles, computers. Not only electronic but there are also newspapers which are circulated in almost every corner of the nation in English, Hindi and other different regional languages, which has a growing and a steady demand because of the rise in literacy level of the people around the nation. The Supreme Court, in the case of *in re: Vijay Kumar*,<sup>7</sup> stated that “the primary function of the press is to provide comprehensive and objective information on all aspects of the country’s political, social, economic and cultural

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<sup>6</sup> BLACK’S LAW DICTIONARY, 3752 (8<sup>th</sup> ed., 2004).

<sup>7</sup> (1996) 6 SCC 466.

life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion”.<sup>8</sup> All these powers are gained by the media under Article 19 (1) (a) of the Indian Constitution, which provides the press with the right to freedom of speech and expression.

In *Union of India v. Motion Picture Association*,<sup>9</sup> the apex court held that free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of different viewpoints, debating and forming one’s own views and expressing them are the basic ideas of a free society. This right is an essential element for media to work freely in a nation like India, which is a mixture of different societies. The media acts as a watchdog over society and attempts to observe and inform the people of the happening or a non-happening event. It is not only the general people who gain information but the judiciary as well who benefits from the active role played by the fearless journalism.

#### IV. MEANING OF MEDIA TRIAL

*The media should perform the acts of journalism and not as a special agency for the Court.*

*-Supreme Court of India, in Sidharth Vasisht v. NCT of Delhi<sup>10</sup>.*

The media trial is not an older concept, as the use of the phrase “trial by media” got popular in the last few decades only. Though this term has been coined recently, its meaning could be understood from one of the United States cases named *Roscoe “Fatty” Arbuckle, 1921*.<sup>11</sup> The phrase “*trial by media*” generally is an attempt made by the media channels of holding the accused guilty even prior to his actual trial taking place. The media channel basically conduct their own parallel investigation even though the police are conducting the same. Media is also considered as the voice of the public, so in respect to that, in recent years, media has started assuming themselves as a “public court”, wherein it carries out trials parallel to those of the court of law, does its own investigation, and generates up a public opinion against the accused even before the court pronounces the final verdict.<sup>12</sup> Media trial is a process in which the media generally tends to conduct a separate investigation and on building opinion against the accused put accusation on the accused, even before the court could take cognisance of the case. In doing so, the media ultimately leads to affecting the decisions of the court.

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<sup>8</sup> *Id.*

<sup>9</sup> AIR 1999 SC 2334.

<sup>10</sup> (2010) 6 SCC 1.

<sup>11</sup> Diva Rai, *Constitutionality of Media Trials*, I PLEADERS (Nov. 06, 2021, 12:11 PM), <https://blog.ipleaders.in/constitutionality-of-media-trials-and-landmark-cases/>.

<sup>12</sup> Deeksha Malik and Harsha Jeswal, *Trial by media: perverting the course of justice*, LEX WARRIER (Nov. 06, 2021, 02:13 PM), <http://www.journal.lex-warrier.in/2015/09/23/trial-by-media-perverting-the-course-of-justice/>.

In a landmark judgement pronounced by the Supreme Court in the case of *State of Maharashtra v. Rajendra Jawanmal Gandhi*<sup>13</sup>, the court observed that “there is a procedure established by the law governing the conduct of the trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of the rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by the rules of law.” In media trial, the media overlooks the primary idea that governs trial in India, which is “guilty beyond reasonable doubt” and “innocent until proven guilty”.<sup>14</sup> The media, by emphasising 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.<sup>15</sup> The trend of media trial is wrong not only because it surpasses the limit of freedom of speech and expression but also because it impedes the way of a fair trial.

## V. FAIR TRIAL V. MEDIA TRIAL

The concept of a fair trial is a very important part of the judicial system. This concept falls in both pre-and post-trial procedures. The free and fair trial could be defined as “a trial by a neutral and fair court, conducted so as to accord each party the due process rights required applicable by law; of a criminal trial, that the defendant’s constitutional rights have been respected.”<sup>16</sup> In India, the court decides whether a trial is fair or not as per the procedure laid down in the Code of Criminal Procedure, 1973. Further, the Indian Constitution, through its Article 21, renders the fair trial as part of personal life and personal liberty.<sup>17</sup> The apex court also opined that the right to a fair trial includes the right to be tried by an unbiased or prejudiced judge.<sup>18</sup> There are many Supreme court judgements that focus and emphasise the free and fair trial and its need and benefit in the Indian Judiciary.

In *Ratiram v. State of Madhya Pradesh*,<sup>19</sup> the court observed that a fair trial is the heart of criminal jurisprudence. The concept of a fair trial is protected under Article 21, read with Article 14 of the Constitution. And, denial of a fair trial would be considered a violation of fundamental rights as well as the human right of a person involved in the trial. However, it is

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<sup>13</sup> AIR 1997 S.C. 3986.

<sup>14</sup> Sanatan Deshpande & Priyank Jagawanshi, *A critical analysis of media trial and its effect on Indian judiciary*, 6(1) IJRAR 173, 173-174 (2019).

<sup>15</sup> *Id.*

<sup>16</sup> Priya Murali & Balaji Harish Iyer, *Trial by media*, SSRN (Nov. 07, 2021, 10:22 PM), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2115609](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2115609).

<sup>17</sup> INDIA CONST. art. 21.

<sup>18</sup> Bhajan Lal, Chief Minister, Haryana v. Jindal Strips Ltd., (1994) 6 SCC 19.

<sup>19</sup> AIR 2012 SC 1485.

pertinent to note that the right to a fair trial is not restricted, while the rights to freedom of speech and expression and freedom of the press are subject to a reasonable restriction.<sup>20</sup> The proponents of the media trial may contend that by this trend, the affected persons' rights are protected since it helps to ensure justice, while the opponents may argue that it is one of the factors leading to the infringement of people's right to a fair trial.<sup>21</sup> The trial is very much affected by the Media sensation. The trial by the Media or the Media trial effects and hinders the free and fair trial for the purpose of imparting justice. In many cases, the media exceeds its freedom of speech and expression by broadcasting and publishing materials that are prejudicial to the interest of the parties, like the character of the parties, photographs, criticism of the witnesses, etc. The conflict between the freedom of speech extended to media and fair trial has always raised a number of questions and has forced the Supreme Court to intervene and try to put an end to this conflicting issue. The Supreme Court has held numerously that a trial by media has in a number of cases is the very antithesis of the rule of law and has led to the miscarriage of justice.

## VI. MEDIA TRIAL AND ITS EFFECTS

Media plays a vital role in making the community well aware of their surroundings and to act accordingly. However, sometimes this role of media becomes so toxic in nature that it tends to have a have negative impact not only on the rights of the people in the society but also on different criminal procedures.

### (A) Media Trial and its effect on Investigation

The investigation is considered a part of pretrial proceedings. The pretrial proceedings include pre-arrest investigation, conviction, detention, court decision, initial appearance before a municipal judge, preliminary or grand jury hearing, evidence or indictment arraignment, and motions for pretrial proceedings. In an adversarial model, one can't be made guilty till the prosecution proves the case beyond a reasonable doubt. Both the parties, i.e., prosecution and defence, get an equal chance to put the evidence before the Hon'ble judge of the court. In the case of *Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.)*,<sup>22</sup> the apex court settled that the "Fair trial" includes fair and proper opportunities allowed by law to prove innocence. Adducing evidence in support of the defence is a valuable right.

In a criminal case, denial of that right means denial of fair trial and, to ensure a fair trial, an

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<sup>20</sup> Md. Pizur Hossain, *Media Trial vs. Right to a fair trial: An endeavour to learn about Existing Judicial Safeguards and Thinkable Solutions*, ALSA, 2015, 24, 36.

<sup>21</sup> *Id.*

<sup>22</sup> (2007) 2 S.C.C. 258.

investigation by police officers is an essential element of any criminal proceedings. The media used to cover each and every coverage of police action. Sometimes, media use to provide some leadership to the investigating agency, with the help of their contacts, but sometimes, media conducts their own parallel investigation, which hampers the working of investigating bodies. It has been observed by the court in the case of *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr.*<sup>23</sup> that the independent investigation conducted by the media houses or newspapers interferes with the administration of justice, as the investigation hampers the prejudice of the accused or the prosecution. It means the media can interfere with the administration of justice by way of scandalising the judges, interfering with witnesses, interfering with investigation procedure by tampering with evidence and contentious publications in connection with lis pendens.

### **(B) Media Trial and its effect on Right to Privacy**

The right to privacy as a fundamental right has been provided with a major significance in the Indian Constitution under Article 21. The roots of the right to privacy may be traced back to natural rights, which are basic, inherent and inalienable rights. There are strong legal bases for the right to privacy in International Law and human rights<sup>24</sup>. Later, the Right to Privacy was developed by the judiciary through various judgements under Article 21 of the Indian Constitution. In a landmark judgement in the case of *Kharak Singh vs. the State of U.P.*<sup>25</sup>, pronounced by the Hon'ble Supreme Court of India, the court held that right to privacy is a fundamental right implicit under Article 21 of the Constitution as it states, "No person shall be deprived of his life or personal liberty, except according to procedure established by law." In the case of *Sharada vs. Dharampal*<sup>26</sup>, the Hon'ble Supreme Court defined the term privacy as "the state of being free from intrusion or disturbance in one's private life or affairs". Further, in the case of *K.S. Puttaswamy vs. Union of India*<sup>27</sup>, the court again reaffirmed the right to privacy as an integral part of life and personal liberty under Article 21 of the Constitution.

These judgements clearly draw an image that the fundamental right to life and liberty guaranteed to individuals puts several restrictions on the freedom of the press. In the case of *R. Rajagopal v. State of Tamil Nadu*,<sup>28</sup> where the court's observation led the author to think about true reminiscences of the limits of freedom of the press with respect to the right to privacy, "A

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<sup>23</sup> 1961 SCR (3) 460.

<sup>24</sup> Bindu Singhal, *Role of Media and Right to Privacy in India – a Legal Perspective*, (Nov. 10, 2021, 12:00 P.M.), <http://hdl.handle.net/10603/40105>.

<sup>25</sup> AIR 1963 S.C. 1295.

<sup>26</sup> (2003) 4 S.C.C. 493.

<sup>27</sup> (2017) 10 S.C.C. 1.

<sup>28</sup> AIR 1995 SC 264.



citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. No one can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in action for damages. Position may, however, be different if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.” Further, “the court has also observed that once a matter becomes a part of public record including court records, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others.”<sup>29</sup> Thus, it means the court has recognised and respected the right to privacy of an individual, and the same cannot be sacrificed at the cost of media’s freedom of speech and expression. Further, in the case of *Govind vs. the State of M.P.*,<sup>30</sup> the court observed that the right to privacy is not an absolute right. And, same can be denied only when there would be some reasonable basis of intrusion is seen. The court further opined that this respective right would undergo a case-by-case development. Henceforth, the right to express freely, which is the backbone of media, has been subject to abuse and the question of privacy in contrast to expression remains unanswered, with no legislation to regulate and balance the two rights.<sup>31</sup> Thus, it is necessary that media should maintain a proper balance between freedom of the press and the right to privacy. They should act in good faith and in the public interest.

## VII. MEDIA TRIALS AND THEIR REGULATING LAWS

It is one of the fundamental principles of journalism that the media should have carried out an adequate and diligent investigation prior to the publication of an offending statement about any person<sup>32</sup>. In case any such act is committed by the media, it is then liable to be punished as per punishment prescribed for the act under the law. There are several norms that are set up in regards to the Media Trial to ensure due process of law, and in case of a conflict between freedom of speech and fair trial, it is the fair trial that prevails as the principle of a fair trial, and due process of law are the ones which if not followed can bring high injustice to the party and immense harm and defeat to the justice delivery system.

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<sup>29</sup> *Id.*

<sup>30</sup> AIR 1975 SC 1378.

<sup>31</sup> Ahkam Khan & Parimal Kashyap, *Sting Operations: The Role of Media as a Vigilante*, 4 INDIAN J.L. & PUB. POL’y 61, 67 (2018).

<sup>32</sup> Badala Tachilisa Balule, *Striking a balance between media freedom and protection of reputation: the defence of reasonable publication in Botswana*, 2 CILSA (2013).

### **(A) Law relating to Contempt of Court**

In India, the Contempt of Courts Act, 1971 was passed by the legislation, which has defined both civil and criminal contempt. This act regulates the various power and procedure necessary to punish the contemnor for contempt of court. The Constitution guaranteed the freedom of speech under Article 19 (1) (a), but the same would be reasonably restricted as per the grounds mentioned under Article 19 (2). Further, Article 129 and 215 of the Constitution gives power to both Supreme Court and High Court, respectively, to punish the people for contempt.

Now, in the Contempt Act, 1971 section 2 (c), it is stated that any publication which tries to interfere with the administration of justice in any way, then it will result in criminal contempt.<sup>33</sup> The same could not be contempt if the contemnor took the defence of reasonable restriction as their actions might fall into it; in that case, the court might prevent the contemnor. And whereas Section 3 of the above said Act states that the “innocent publication and distribution of matter would not be considered as contempt”. In one of the cases named *D.C. Saxena v Chief Justice of India*,<sup>34</sup> the court propounded the purpose of punishment for the Contempt of Courts Act, 1971 is not just to protect the court or authority of court but also to protect the public. It is important to keep the judiciary free from unwarranted interference as it undermines public confidence. The jurisdiction of contempt should not be exercised unless there is substantial interference with due course of justice.

### **(B) Law relating to Criminal Law and PCI norms**

There are several restrictions that have been imposed upon the working of the media under several statutes. The Indian Penal Code under section 228A provides with punishment for the publication against the women subjected to crime u/s 376, 376A, 376B, 376C or 376D as imprisonment of either description for a term which may extend to two years or fine. The law regarding the similar fact has been even covered under PCI norms which state that victims, witnesses, suspects and accused should not be given excessive publicity as its amounts to an invasion of their privacy rights and identification of witnesses by the newspapers/media endanger them to come under pressure from both, the accused or his associates as well as investigative agencies. It further provides that the suspect’s picture should not be shown as it may create a problem during ‘identification parades’ conducted under the Code of Criminal Procedure for identifying the accused.<sup>35</sup>

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<sup>33</sup> The Contempt of Courts Act, 1971, No. 70, Acts of Parliament, 1971 (India).

<sup>34</sup> AIR 1955 Ori 169.

<sup>35</sup> *Id.*

It is not only the PCI norms and the Indian Penal Code which deals with the acts of media and prescribe punishment in case of infringement of the law; there are statutes as well. The Juvenile Justice (Care and Protection) Act, 2015, under section 74, provides punishment for the offence of publication with respect to any child victim or child witness without the prior permission of the board or committee as imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

### **(C) 200<sup>th</sup> Law Commission Report**

The 200<sup>th</sup> Report of the Law Commission of India (LCI) entitled Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971) by former Supreme Court Judge M. Jagannatha Rao has made recommendations to address the damaging effect of media sensationalism. The report recommends a prohibition on news reports of anything that is prejudicial towards the accused – this restriction shall operate from the time of arrest (UCLA International Institute 2006): the LCI recommends that the beginning of a criminal case should be from the time of the first arrest made and not the filing of the charge sheet. At present, such publication is contempt only if a charge sheet has been filed in a criminal case. Another recommendation has been to empower the High Court to direct the media to postpone publication of case material only after the final verdict has been delivered.<sup>36</sup> The Report of the Commission also mentioned the publications that would be prejudicial after arrests, such as publications referring to confessions, previous convictions, character, and this could be criminal contempt.

## **VIII. IMPACT OF MEDIA TRIAL ON THE JUDICIAL PROCESS**

Press as an essential body providing information has a direct relationship with the judicial process of the country. However, issues in such a relationship existing between press and judiciary occur when there is a trial conducted by a media. The tension between the courts and the media revolves around two general concerns. The first is that there should be no ‘trial by media, and the second is that it is not for the press or anyone else to ‘prejudge’ a case. Justice demands that people should be tried by courts of law and not be pilloried by the press<sup>37</sup>. There are several cases held by the Supreme Court wherein, in one or the other, media trial has played a major role in influencing the decision-making body of the country.

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<sup>36</sup> Priya Murali & Balaji Harish Iyer, *Trial by Media*, SSRN (Mar. 11, 2021, 01:39 PM), <http://ssrn.com/abstract=2115609>.

<sup>37</sup> SM Aamir Ali & Mohd. Imran, *Media Trial: A Hindrance in Dispensation of Justice*, 2 JLSR 88, 93 (2016).

**(A) K.M. Nanavati v. the State of Maharashtra<sup>38</sup>**

The case of K.M. Nanavati was the landmark case and the first to observe the media trial, which affected the decision of the jury largely. It was a case that received great media attention, particularly in Mumbai, marking the end of jury trials in India—considered as one of the first instances of media trial where public opinion and media coverage allegedly made a significant impact on the jury members who, thereby, acquitted Indian Navy officer KM Nanavati for killing his wife's paramour.<sup>39</sup> The case of Nanavati was not only the first case where the media trial took place, but it was also the first crime that got jumped into the 'national event'<sup>40</sup>. There were several articles published in the newspaper which portrayed the accused in the matter as a hero and, on the other side, the victim as the villain. The scoops of the media revolved around the love triangle of the parties involved in the matter. The newspaper BLITZ covered several news pertaining to the case and had printed several heads like 'The tragedy of the Eternal Triangle' or even 'Sylvia Nanavati tells her Story of Love and Torture'<sup>41</sup>. The media drew a completely new scenario before the judiciary, and the jury under which K.M. Nanavati was painted to be an innocent person who is a senior naval officer was dedicated towards his duty he owes to the nation because of which he had to stay outside of the nation for months which left his wife lonely and vulnerable. On the other hand, the victim, Mr. Ahuja, was painted as a rich businessman who had no commitment to morality and nationalism. The Affair he had with the wife of Nanavati was considered to be immoral and also anti-national. Due to the impact of the media trial, the case became a heady mix of morality, patriotism and communal pride<sup>42</sup>.

**(B) Manu Sharma v. State (NCT of Delhi)/ Jessica Lal Murder Case<sup>43</sup>**

The case of Jessica Lal Murder case was something that involved and covered all the aspects of high society crime involving celebrities and politicians. It was the case of pot-boiler where fashion, high society, crime, political influence and also media activism came together<sup>44</sup>. In the following case, Jessica Lal was shot dead in a swishy Delhi nightclub. Scores of witnesses pointed to Manu Sharma, son of Vinod Sharma, an influential Congress leader from Haryana,

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<sup>38</sup> 1962 AIR 605.

<sup>39</sup> Murali Krishnan, *The Supreme Court of India – 67 years*, (Oct. 10, 2019, 12:45 AM), <https://barandbench.com/supreme-court-india-67-years>.

<sup>40</sup> Bachi Karkaria, *Nanavati case marked many firsts – trial by media & tussle between judiciary and executive*, (Oct 10, 2019, 12:52 AM), <https://theprint.in/opinion/nanavati-case-marked-many-firsts-trial-by-media-tussle-between-judiciary-and-executive/227964>.

<sup>41</sup> Bachi Karkaria, *A 'crime of passion' that India never forgot*, (Oct, 10, 01:30 AM), <https://www.bbc.com/news/world-asia-india-39790535>.

<sup>42</sup> *ibid.*

<sup>43</sup> (2010) 6 S.C.C. 1.

<sup>44</sup> Vipul Tripathi, *Role of the media in Jessica Lal Case*, (Oct 10, 02:05 AM), <http://blogs.reuters.com/india/2010/04/20/role-of-the-media-in-jessica-lal-case>.

but were allegedly silenced, and Manu was acquitted by a trial court. However, intense media and public pressure forced the Delhi High Court to reopen the case, and after a 25-day fast track trial, the brattish murderer was sentenced to life in 2006<sup>45</sup>. This case really sets an example as to what is the actual power of investigative media and how its effort can turn the case upside down. Later, the Hon'ble Supreme Court, in this case, observed that "Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. It is essential for the maintenance of the dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country that the criticism or even the reporting, particularly in sub judice matters, must be subjected to checks and balances so as not to interfere with the administration of justice." However, the fact which is beyond denial is that the media stepped in to expose such loopholes in our system to arrive at the doorstep of justice for Jessica Lal.<sup>46</sup>

**(C) Dr. Rajesh Talwar and anr v. Central Bureau of Investigation (Aarushi Talwar Murder Case)<sup>47</sup>**

The case of Aarushi Talwar is a case that shows the high level of negligence on the part of different authorities because of whom the case from a criminal murder case became a mockery and a shoddy affair. The very first fault was on the part of the Police authorities, who were unable to conduct a proper investigation. The relevance of facts drawn by the police was not on the evidence collected from the crime scene or the statement of the witnesses, but there was a heavy reliance on the scientific tests, lie-detector, brain-mapping, and even narco-analysis test which as evidence are not relevant in the court of law. The story does not end here. Later the picture of the following crime is made much more colourful by the baseless assumptions and statements made by the police force and CBI, which were given importance and were reported by the media. Besides these assumptions, there was also a high rated unethical coverage by the media. The media gave several statements and tried the matter in their own way, and it even accused the Talwars of the murder of Aarushi even before the matter was pending before the court.

The media stated that the Talwar couple was involved in wife swapping and alleged affairs. Even after such an allegation, there was no stoppage. The media even picturised the victim as

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<sup>45</sup> *supra* Note 38.

<sup>46</sup> Priyanka Mittal, *Trial by Media: Growing Influence of Media over Implementation of Law*, IJLLJS.

<sup>47</sup> 2013 (82) A.C.C. 303.

one who was usually found in a compromising position with the house help and was having an affair. The media even twisted several facts and circumstances of the case and presented it before the general public. In the plea of the Talwars to the Supreme Court, they demanded permission to withdraw the SLP so that they could approach the High Court, to which the Supreme Court, after taking cognisance of the issue, provided with an order which stated, “Learned Counsel for the Petitioner seeks permission to withdraw the SLP with the liberty to approach the High Court. Permission is granted. In case the matter is mentioned for being taken out of turn, we request the High Court to consider it sympathetically”<sup>48</sup>. However, the media moulded with the orders of the Court and Mail Today wrote, “The Supreme Court’s dismissal of an application from Rajesh and Nupur Talwar to summon 14 witnesses in the murder case of their daughter Aarushi and domestic help Hemraj clears the decks for progress in the trial case. The apex court rightfully censured the Talwars for attempting to leapfrog by the Allahabad High Court”<sup>49</sup> not only this, when there was a closure report submitted by the CBI, there were several contradictions which were observed in the report, but the same was not reported anywhere by the media. However, the media, who are acting as a fourth pillar of the government, should have questioned all the faults committed in the case, but rather it was running behind rolling over the case to bring it to a closure. It can be observed from a fact that on May 15, the Hindustan Times reported on its front page that, “fed up with the repeated adjournments sought by Rajesh and Nupur Talwar”, the CBI court “threatened to cancel their bail”<sup>50</sup>. This statement did not bring an end to the story. The Investigating Officer in the case of Talwars, Officer AGL Kaul, declared the Talwars as killers without any backbone to his statement, which took space onto the front headlines of the case. However, when such a thesis of the Officer was falling apart during the time of cross-examination, there was no effort made on the part of the media to report the same.

All these facts and figures draw only a single conclusion to the fact that media, in an urge of gaining TRP, acted in a monstrous manner and instead of questioning the non-supportive assumptions of the police and CBI, it reported the same and provided the general public with the trashy script of the case, which was very much similar to a daily soap entertainment show.

#### **(D) Sushant Singh Rajput Case**

Like in another case, in this case also, the media has involved themselves beyond their power

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<sup>48</sup> Shohini Ghosh, *All but Lynched by the media*, (Oct. 10, 2019, 03:00 AM), <https://www.thehindu.com/opinion/op-ed/all-but-lynched-by-the-media/article4724980.ece>.

<sup>49</sup> *supra* note 30 at 10.

<sup>50</sup> *Id.*

and tried to interfere with the judicial proceedings, investigations and all. This current case is still pending before the eyes of the law. The fact of case started when Sushant Rajput was found dead at his apartment in Mumbai's Bandra on June 14, 2020. The initial investigation done by the Mumbai Police revealed that prima facie was a case of suicide. The provisional post mortem report revealed that the cause of death was asphyxia due to hanging.<sup>51</sup> Later, police have recorded the statement from various celebrities after the FIR had been lodged by the deceased father. Rhea Chakroborty, the girlfriend of the deceased and her brother Shovik Chakroborthy, was made suspect by the victims. There was a whirlpool of misreported facts concocted lies, and sheer entertainment in the name of news was aired by various news broadcasters. The news channel shamelessly ran provocative headlines like "*Rheas' black magic on Sushant*" and "*What does India have to say about Rhea's lies?*" The first code of conduct was broken by the media channels, and soon after, his alleged suicide was discussed like dinner table gossip.<sup>52</sup> It was also found that when the police were investigating the actor's death, TV channels were busy running parallel investigations in newsrooms. From reading his personal diary to calling a 'paranormal expert' who spoke with his spirit every week, a new narrative was served fresh to equally hungry audiences.<sup>53</sup> After the concern drawn by the Bombay High Court on the media trials, the press council of India stated that the media should adhere to the norms of journalistic conduct in covering cases under investigation and is advised not to carry out its own "parallel trial". Even after the warnings, the trial by the media continued, and the matter was brought to the notice of the National Broadcasting Authority (NBA), which imposed a fine of Rs 1 lakh for broadcasting fake tweets related to actors Sushant Singh Rajput.<sup>54</sup> The NBSA had also stated that while news channels have a duty to report news which may be in the public interest, "it is equally important to present the news in a manner which does not violate the privacy of the dead nor sensationalise a tragic incident. It is important that the dead must not be subjected to unnecessary media glare."<sup>55</sup> The NBSA had based their order on the basis of the right to privacy, which is also extended to a dead person. Henceforth, after the occurrence of all such controversies relating current case, this will not erase the wrong done by the channels which have affected the reputation and constitutional rights of the parties; further, it

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<sup>51</sup> Express Web Desk, *Sushant Singh Rajput death case: What we know so far*, (Mar. 15, 2021, 10:17 PM), <https://indianexpress.com/article/india/sushant-singh-rajput-death-case-rhea-chakroborty-sc-6561447/>.

<sup>52</sup> Perna Lidhoo, *Aarushi Talwar to Rhea Chakroborty: A Tale of Two Media Trials and Zero Lessons Learnt*, (Mar. 16, 2021, 11:11 PM), <https://thewire.in/media/rhea-chakroborty-sushant-singh-rajput-aarushi-talwar-media-trial>.

<sup>53</sup> *Id.*

<sup>54</sup> The Wire Staff, *Sushant Singh Rajput: NBSA Fines Aaj Tak Rs 1 Lakh for Violating Code of Ethics*, (Mar. 16, 2021, 06:15 PM), <https://thewire.in/media/sushant-singh-rajput-death-nbsa-fine-aaj-tak-zee-news-india-tv-apology>.

<sup>55</sup> *Id.*

would also be correct to say that eventually, the media channels are affecting the trial in or another way.

## **IX. CONCLUSION**

Media as an active participant and the fourth pillar of democracy plays a major role in providing the people with the information of happening and non-happening of different events all across the globe, especially in a country like India having a mixed society with several different regional languages spoken and studies across India. The media has been provided with the freedom of the press under Article 19(1)(a) of the Indian Constitution, which provides the media or the press with the right to freedom of speech and expression. However, with the increasing media institutions, there is an increasing level of competition in the different institutions of media, which has made media run after the TRP of their institution. It is because of this reason that the purpose for which media was formed has turned upside down as the modern media, rather than providing with the news which shall make people informed about their rights, is searching for such scoops which soothe the ears of their audience. The stories of media in modern times majorly relates to the different acts of people all around the world; whether it be a common man or a celebrity, everyone is on the shoot of media coverage. In covering these stories, media sometimes tend to infringe the right to privacy of the people. In any case, which comes up to the media, in the thrust of TRP, the media tends to investigate the matter on their level and hold the accused person liable even before a court could do so. This type of actions committed by the media is known as a media trial. While performing media trials, the media tends to infringe the basic principles of the right to life which may include the presumption of innocence and fair trial. Besides these principles, there have been several cases wherein the media has before the complete disposal of the matter by the court has put accusations on the accused person, hampering their personality and ultimately leading to infringement of their right to privacy.

Media having the biggest quality of influencing the people affects the society at large with its different stories and acts. The unethical behaviour followed by the media causes it many times to cross the limits of decency. All such unethical acts impact society at large. There are several shows and films telecasted by the media which are shown publicly on news channels or by the medium of films that sometimes contain obscene material, which harms the Indian values which each member of the Indian society wants to provide to their children. The story of media is not limited only to the production of obscene material, but the media also tend to twist the facts in their stories. They tend to create their own story, which is far away from reality and in



the occasion of twisting of such facts, what ultimately is harmed is the personality and the dignity of the people, which ultimately infringes their right to life and personal liberty. Unfortunately, the media has developed a tendency to sensationalise the news in order to obtain more profits. It is high time when sensationalism should be avoided, and the media should try and make a balance between the freedom of the press and the rights of the citizens as well as to fair trial.

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