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# Social Media Trial: A Fate to Criminal Justice System and the Society

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## ABSTRACT

*The Internet Platform provides rapid access to large amount of information. Technology-based "social networking" or "social media" services let people tell millions of people what happening and get answers immediately. Social media is a online platform which enables people to communicate in real time effortlessly. With the increased use of internet, it has become commonplace for the media to intervene in pending trials. The media, which has been reborn as the people's court, starts an investigation on its own and shapes people's opinion. Trials on social media are considered as violation of ethics. Social Media has become commonplace for social media to scrutinize the truth, like the judiciary. In a social media trial, each person does their investigation and builds a conventional wisdom against the defendant before starting a court case. It generates biases among the general population and occasionally even among judges. Because of this, the accused is not thought to be innocent. Instead, they are thought to be guilty. Not only does it interfere with the "administration of justice," but also sends the wrong signal to society. The media may subconsciously influence the judge's decision by reporting and publicizing inadmissible evidence. In our constitution, there are no direct provisions regarding the media. However, they are mentioned in Article 19 (1) (a) and limitation under Article 19(2). The main goal of this study is to look closely at how social media trials are used in India and how they hurt the criminal justice system and Indian society as a whole. This research will base on doctrinal study.*

**Keywords:** *Social Media Trials, Criminal Justice, Society, Technology, Interference etc.*

## I. INTRODUCTION

Some people think of social media as a type of popular civic organization that lets people communicate their ideas easily and freely on a large scale and in ways that can have a strong impact on a local level. Social media networks, which are modern tools that have grown to play a direct role in their growth, have helped social media. Social media are interactive apps on the internet that have become a popular and quickly growing trend in the past few years. They are

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used by hundreds of millions of people.<sup>2</sup>

They played significant role in turning the traditional social structure on its head, with the advancement of technology common people have empowered with easy access to information which lead to more citizen engagement in administration<sup>3</sup>. Social media networks allow anyone to join, are hard to run, are used by most people, and are not limited by political borders. Also, the people who get the media message have gone from being anonymous users and consumers to being active participants in making it.<sup>4</sup>

Now a day's social media platform also increase democracy for their subscribers by providing free speech places, making media freedom an inescapable and unavoidable reality.<sup>5</sup>

Modern media techniques, with social networks at the forefront, have become an integral part of the lives of individuals, serving as a link among components and local administration.

Social media plays a vital role in our everyday life with the easy access to information, a platform for discussion on issues of national and international issues. Therefore, crime is the most common issue that social media platforms address. Around 95% say that the social media is the primary place of crime-related details.<sup>6</sup> This is why crime is featured prominently in the media. Most surveys estimate that crime-related themes comprise between 10 and 30 percent of the average newspaper's content,<sup>7</sup> not social media. Social network users perceive crime-related themes as a rich source of knowledge, which motivates residents to share his opinion and express crime-related observation and photographs.

### **Social Media Definitions**

Social media is technologically advanced platform based on concurrent or asynchronous complex interrelationships that use interactive digital communication to deliver and receive information from multiple channels.

Social media is a network of networks where subscribers can create an account. They are known as second-generation online platforms and are referred to as "social" as it arises from the notion of community advancement. Following that, the user can use the Internet to find people with similar interests, explore the interest area, and share pictures and feelings with groups of

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<sup>2</sup> Vollenbroek, W. et. el. "Identification of influence in social media communities", 10(3) *IJ WC*, 280 (2014).

<sup>3</sup> Al-Debaisi, A. et. el. "The role of social media networks in shaping public opinion among Jordanian University Students", 40(1) *JSHSIS*, 74 (2013).

<sup>4</sup> Fadel, M., "The role of social media in forming local public opinion (2014–2017)", (12) *TPS Journal*, 191(2018).

<sup>5</sup> Constitutional judicial/on 5/20/1995 Case No. 5/15/ 6/8/1996

<sup>6</sup> Dubois, J., "La Couverture médiatique du crime organisé—Impact sur l'opinion publique? Gendarmerie Royale du Canada" 34. (2002)

<sup>7</sup> Gardner, D. "*La science et les politiques de la peur*, Montréal, Les Éditions logiques (version française)", *LOGIQUES*, 250(2009).

people.<sup>8</sup>

### **Research Problem**

The topic of social media affecting public perception and its effect on the appropriate functioning of criminal justice increases numerous issues.

- How can social media platforms influence public opinion?
- What impact social media platform has on the effect of India's criminal system?

### **Research Methodology**

The author used analytic methodology in this paper by analyzing official papers about social media in Indian legislation, like the Indian Constitution, the Press and Publication Law, the CPC the Penal Code, as well as related global agreement also court laws. The author also reviewed the relevant literature.

### **Literature Review**

Due to the novelty of the notion of Social Media Trials, there is a dearth of scientific research on the topic. There is much research on media trials, but the same cannot be true of social media trials. To briefly summaries the extensive literature on media trials as they pertain to our discussion:

There is a need to examine whether the desire of court systems to restrict media freedom is related to their perception of the media's influence on criminal justice systems.<sup>9</sup>

However, it was also widely held in most publications that the media should not usurp the judicial powers nor engage in subjective,<sup>10</sup> prejudiced reporting of official criminal court procedures. In addition, it was acknowledged that the media distorts facts regarding the proceedings.<sup>11</sup>

The study gap identified, however, was primarily associated with social media trials in general, their impact on the Indian judicial system as contrasted to jury-based trials, and the absence of a discussion on witness and accused identity protection of preventing harassment and discrimination.

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<sup>8</sup> Abu Sharia et al., "Using social networking sites (Facebook) by high school students in Jordan, as a primary medium in their learning", University of Jordan, (2013).

<sup>9</sup> Chris Greer & Eugene McLaughlin, "Trial by Media: Policing." The 24-7 News "Mediasphere and the Politics of Outrage", (2011).

<sup>10</sup> Prabhat Ranjan & Sindhuja Kashyap, "Media as the Fourth Estate of Democracy" SSRN (2014).

<sup>11</sup> Claire S.H. Lim, "Media Influence on Courts", ALE Journal (2015).

## **II. IMPACT OF SOCIAL MEDIA IN FORMING PUBLIC BELIEF**

Justice G.S. Patel remarked, "That's a mob judgment. That is not a democracy. That is not a legal rule." Regarding the pressure encountered by the judges, he stated, "Most judges do withstand (the strain), but there are judges across the system, especially in the initial courts or courts of the first instance, who are subjected to this unfair pressure (of "what will the public think?"). No judge should be required to determine under these circumstances. It is an absurd method of operation. Furthermore, I see no reason journalists should be permitted to win public backing."

Justice Sikri stated that the social media has experienced a radical transition in the technical age, adding that "we are in the era of paid and fake news." Social media has a large reach and could readily influence an individual's opinion. The media's presentation of the accused's prior misdeeds during a trial generates prejudices in the jury's minds and the general public. In addition, examining social and economic elements associated with the cases impedes the path to impartiality. Social media is a most powerful tool for shaping and influencing public viewpoint.<sup>12</sup>

By publishing and making publicly available inadmissible material, the media could bring to the judge's (and the public's) attention information that should not be considered when deciding the case. This detail may unknowingly affect the judge's decision. People who are exonerated by the court for lack of proof beyond a reasonable doubt are defamed through social media. They struggle to rebuild their reputation in society. In its pursuit of sensationalism, the media ignores the fact that this type revelation jeopardies the accused's right to a dignified life.

## **III. LIMITS ON SOCIAL MEDIA NETWORKS PUBLICATION**

These media enable users to start exercising their right to free expression and opinion, fostering democracy. As a result, media freedom has become a reality that should not be opposed or ignored. All individuals are entitled to free expression and opinion, which is also guaranteed by the constitution.<sup>13</sup>

Social media is a powerful and formative force in shaping public opinion. By making inadmissible information publicly, the media present the information to the public which is irrelevant for consideration in deciding the case's consequence and may unknowingly impact

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<sup>12</sup> "Social media trials : a threat to the society and legal system", February 3, 2021, <https://blog.ipleaders.in/social-media-trials-threat-society-legal-system/> (retrieved on 24 oct 2022)

<sup>13</sup> Tayil Mahmoud Shiyab, "The impact of social media on the rights of the accused in Jordan: Does public opinion matter?" 06 Oct 2021, <https://www.tandfonline.com/doi/full/10.1080/23311983.2021.1994112> (retrieved on 24 oct 2022)

the judge's decision. The second consideration is organisational equity. Prejudices and barriers to fairness and equitable influence the court's decision. A suspect or defendant is entitled to unbiased trial and is "deemed innocent until proven guilty in a court of law". Hence, these preconceptions grow as a social sin that impacts the attentions of the populace. The most famous case in which public opinion affected the conviction of the defendants is the K.M. Nanavati case.

"Article 19(1)(a) of the Indian Constitution assures free speech and expression". However, Article 19(2) permits for practical penalties, including imprisonment, for "Contempt of Court." The "administration of justice" is not covered by Art. 19(2). Interference with the delivery of justice, on the other hand, is specifically defined as "criminal contempt" in Sections 2 and 3 of the Contempt of Courts Act of 1971. As a result, under that Act, "Therefore, publications that interfere with, or appear to interfere with, the administration of justice is contempt within the meaning of this act and a provision of this act is a reasonable restriction of freedom of expression, provided that the provisions of this act. The act provides a remedy to prevent such interference, these restrictions apply".

The Supreme Court ruled in *A.K. Gopalan v. Noordeen*<sup>14</sup> that a publication reported after a suspect's "arrest" creates contempt if it is biased against the culprit. Criminal contempt can be classified into three types: scandalising, prejudicing a trial, and hinder the administration of criminal justice. The natural justice principle states that "every accused has the right to a fair trial," and the principle that "justice must not only be done but also appear to be done" emphasises the importance of a fair trial. The concept of contempt was developed in order to avoid unfair and unjust trials. Contempt is demonstrated by any publication that poisons the minds of jurors or attempts to frighten witnesses to the point where justice cannot be administered.

In the case of Uma Khurana, a teacher in a Delhi school was nearly killed by a crowd on suspicion that she had reportedly coerced her students into prostitution. However, she was exonerated owing to a lack of proof. This is what social media can do to a person; in many cases, even the innocents are not spared. People must be held accountable for their actions on social media, and only a proper legal framework that raises understanding of the law can solve this issue.

### **Contempt of court**

Social media trials are not yet adequately controlled. However, the Contempt of Courts Act of

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<sup>14</sup> 1969 (2) SCC 734

1971 allows the Judiciary to halt specific media trials. Section 3 of the Act is instrumental. There have been instances where Article 19(2) and the Contempt of Courts Act have been at issue. In *Smt. Archana Guha v. Sri Ranjit Guha*<sup>15</sup> established that a contempt of court charge could not be filed simply because a particular judgment was misinterpreted in the media. Media freedom is not restricted by placing constraints in the form of the Act. Although these sections describe contempt, their definitions are reasonably ambiguous, giving judges much discretion over how and when contempt of court actions may be commenced. For example, Sections 4 and 5 employ the ambiguous term "fair." It is troublesome because judges can determine which items constitute contempt and which do not. This interpretation of the topic has been placed within the Constitution's inherent jurisdiction of the Judiciary, and this jurisdiction brings with it its own set of problems. The absence of criteria for determining what constitutes contempt enables judges to call for contempt without justification.

#### **IV. REGULATION OF "FREE" SOCIAL MEDIA?**

Social media comes under the right of freedom of speech which is a fundamental right still we needs laws and regulations related to govern it. However, it is a tricky balancing act because any violation of the fundamental right would result in widespread public outrage.

Section 66A of the IT Act, 2000, as amended by the IT (Amendment) Act, 2008, states the paws related to sending objectionable messages through social media, etc., and states that anyone who uses a computer or electronic device to send information that is offensive, menacing, or known to be false but spread with the intent to cause hatred or ill will is punishable with up to three years in prison.

Recently, Electronics and I.T. Minister Ravi Shankar Prasad introduced "The Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021" at a press conference, describing it as a "soft-touch oversight" process to address matters i.e. the pervasive dissemination of fake news. Software Freedom Law Centre, India (SFLC.in) has stated that the Rules could undermine the values of an open and accessible Internet, the constitutionally protected right to privacy, and the freedom of speech and expression.

Both of these rules could be utilized to govern social media, particularly in active case-related discussions, but no clear path has been developed as of yet. Even whether social media platforms should be required to self-regulate has been debated.

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<sup>15</sup> *Smt. Archana Guha v. Sri Ranjit Guha*, [1990] CriLJ 2012.

## V. SOCIAL MEDIA AND CRIMINAL JUSTICE

If the goal is to form public opinion, the frequent publication of such crimes creates a harmful social component in the brain of the individual and the group, because writing to form public opinion frequently implies burden on the Judiciary and all-party members involved in a criminal case. As a result, it may occasionally constitute defamation of the presumption of innocence or lead the criminal judge to violate the principles of independence and impartiality.<sup>16</sup>

### **Affect the presumption of innocence**

Correct, social networks, when dealing with ideas such as "presumption of innocence" or "reasonable doubt," ignore all legal rigor and put a strong accusatory focus on a particular individual. Some media channels are demonstrably biased against those accused of crimes. Typically, the media emphasize the sensational character of the crime. In doing so, they are not entirely fair, objective, or impartial concerning the matter. The greater the global reach of a message, the more upsetting and unsettling it must be.

In the worst-case scenario, these online posts, published in venues such as blogs and social networks, go viral, exposing our client to hostility, contempt, and public ridicule.

The media have continuously aired their view on criminal procedures; the difference now is that social networks have a multiplier impact, so if someone brings out a particular individual, the horrible effect spreads throughout networks.

Indeed, social networks generate not just information sources but also opinions. The issue, in my view, is that in the face of an unproven reality, the networks themselves can generate an opinion counter to the rights of the individual subject of criminal proceedings.

Following what has been discussed; let us not forget that a person, whether or not he is charged, has the right to the presumption of innocence, privacy, honor, and his image, which is sometimes disturbing in light of what is published on social networks, which promotes parallel judgment.

The ubiquity of the usage of social networks has led to an increased in the count of users who not only seek information through them but also sometimes seek to influence criminal proceedings.

In this context, the role of social networks demonstrates a significant increase in the adverse

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<sup>16</sup> Tayil Mahmoud Shiyab, "The impact of social media on the rights of the accused in Jordan: Does public opinion matter?" 06 Oct 2021, <https://www.tandfonline.com/doi/full/10.1080/23311983.2021.1994112> (retrieved on 24 oct 2022) <https://www.tandfonline.com/doi/full/10.1080/23311983.2021.1994112?cookieSet=1> (retrieved on 27 oct 2022)



effects of the parallel trial on the honor, privacy, and self-image of individuals involved in the criminal process.<sup>17</sup>

### **Prejudicial**

A prejudice is a prejudgment made without sufficient information about the subject. It is instructive that prejudice frequently relies on stereotypes and prejudices. For example, you are associating homemaking with women or the color pink with women. Prejudice is an attitude that can lead to criminal behavior and other forms of violence.

### **Ankita Bhandari case**

On September 18, the receptionist of a resort in Rishikesh, Uttarakhand, who was 19 years old, went missing. Ankita's body was retrieved from the Chilla Canal on September 23 after three men admitted to killing and dumping her there. Pulkit Arya, age 35, was the resort's owner. He was the son of BJP leader Vinod Arya. Following the death of Ankita, the authorities are also investigating the eight-month-old disappearance of Priyanka, another young woman from the resort. The local patwari handled the situation until it was transferred to the regular police. Uttarakhand is one of the few Indian states maintaining a pre-British India-era patwari or revenue police system. Their responsibilities include mediation, maintaining law and order, and registering births and deaths. The case also highlights the constant struggle for independence that rural Indian women suffer.<sup>18</sup>

### **Influencing the investigation's confidentiality**

Social media networks are becoming integral to all stages of criminal investigation. Facebook and Twitter are being utilized by authorities to alert the public about local crimes. They publish CCTV footage and crime scene photographs and disseminate information regarding active police action.

In addition to publicizing information that allows them to catch offenders, police agencies are acquiring subpoenas to examine private messages to assist with investigations. In several instances, investigators have developed and presented cases against defendants by accessing their social media accounts. This is conceivable because private communications typically contain correspondence that may directly or indirectly link the recipient to a crime.

In addition, criminal justice experts utilize social media to identify suspects, obtain information

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<sup>17</sup> <https://www.guerrabermudezabogados.com/the-influence-of-social-networks-on-the-presumption-of-innocence/?lang=en> (retrieved on 27 oct 2022)

<sup>18</sup> Ara, I. (2022) *Ankita Bhandari murder case points to rising crime in Uttarakhand, Return to frontpage*. Available at: <https://frontline.thehindu.com/the-nation/ankita-bhandari-murder-case-points-to-rising-crime-in-uttarakhand/article66005513.ece> (Accessed: 31 May 2023).

about criminal activity, locate missing persons, and follow organized crime. In these instances, investigators do not need additional permissions to collect private user information.

## **VI. STRIKING A BALANCE: JUSTICE VERSUS SOCIAL MEDIA**

Social media promote the freedom of expression that they ensure. They continually use this argument to oppose national or regional legislation. However, legislation limits how much criminal information can be shared via social media. Some urge for more control of social media to prevent abuses of the rights of the defense and to increase the effectiveness of the court system.

### **Media Trial – Pros**

With the rise of news-gathering mobile applications in addition to traditional mediums such as news channels on television, the Internet, newspapers, and radio broadcasts, the media has woven its web around the thoughts of nearly every individual who has access to such resources. This enormous outreach makes individuals from every corner of the globe aware of global happenings and informs them regularly about current affairs.

Wealthy industrialists, crooked ministers, and other celebrities evade prosecution by bribing police personnel not to file FIRs against them. The media exposes them and prevents their easy escape by providing the public with a timeline and the most recent updates. This can ensure that the victims receive a fair trial and justice.

The media plays a crucial role in shaping the current generation's mindset and does an outstanding job of luring criminals. The dread of being exposed and publicly disgraced reduces the frequency of daily criminal incidents. Media trials can operate as a deterrent.

### **Media trial – Cons:**

In rare instances, the media play a crucial role in establishing the victim in the minds of the general public and authoritatively identifying the perpetrator before the inquiry is complete. This not only contradicts the justice committee's verdict but also destroys the reputation of the accused.

Different news stations engage in a cutthroat competition about which channel produces the best-prepared stories that capture the audience's attention and increase their TRP. As a result, they offer incorrect information while attempting to make it sound intriguing.

It hinders the complete administration and rulings of courts. The media dominates and calls into question the judgment of CBI teams and courts of law. People have faith in the media and their separate investigations.

In other instances, legal action was taken against multiple newspapers and websites for supplying the public with biased information, leading them to believe that a particular individual is a perpetrator. Trauma can be caused by biased information for those who have been wrongfully accused.<sup>19</sup>

## VII. CONCLUSION

As the number of social gatherings increasing day by day through internet i.e. social media plays a significant role in era of technology. Social media has pros like providing a platform to share opinions on various issues of national and international issues in real time in an effective way and form the public opinion. Crime is one of the most circulated on social networks, and regularly posting and commenting on specific issues on these platforms is one of the most effective ways to shape public opinion. It played an important role in mobilizing consciousness by retelling real events and depicting them in sound, images and words, which often became the precursor to a natural movement beyond the virtual boundaries of these networks. The influence of social media has been evident in shaping public opinion by introducing, announcing and continuously generating interest in important issues in society. This has been shown to us by many incidents like the Ankita Bhandari case and the Sushant Singh Rajput case and the interaction of Indian streets on social media.

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<sup>19</sup> *Trial by media - pros and Cons ~ Group discussion ideas (2022) Group Discussion Ideas*. Available at: <https://www.groupdiscussionideas.com/trial-by-media-pros-and-cons/> (Accessed: 31 May 2023).