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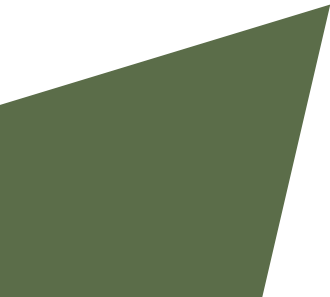
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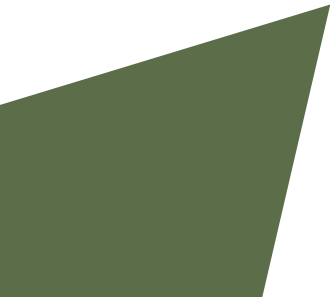
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## ABOUT US

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LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Media Trial: The Judgement before Judge's One**

**Krishna Yadav & Shruti Agarwal**

## MEDIA WILL ENTERTAIN YOU BUT NOT INFORM YOU

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The famous American editor Horace Greece ones said “*Journalism will kill you, but it will keep you alive while you’re at it*” these words are enough to mirror the face of modern-day media of this 21<sup>st</sup> century. In the time when populist regimes are on the rise and with the sudden emergence of electoral authoritarianism the need of free and fair media is immediate and a desperate to ask. This changing phase shaping the outlook of democracies and possessing grave challenge for the dream of independent and credible media, as it seems to be succumbing in the realm of powerful and diminishing its role from watchdog for the people to a just a mere lapdog for the governments. This is the age when information is a warfare from a mere individual to government’s information is the most effective tool for self-glorification and work as weapon to very dismantling the adversary, and prime is the medium in the information quest.

Media is crowned as the fourth pillar of democracy in India. The birth of private media especially after the 1991 economic reforms really established media as the sepyoy of the walls of democracy in India, from exposing corruptions scandals to work as the last voice of the most vulnerable and marginalized people the media should be credited in keeping alive the democracy in India. But in the last decades with the havoc of capitalism and competition in free market the big corporates taken over the media and turned into a billion-dollar profitable industry. In some cases, many independent small persons or enterprise today turned into a corporate itself. This Corporatization of press twirl the seriousness of news telling into frenzy entertainment prime show, where critical job of news now presented into tabloid format where breaking news should be television friendly , loud with sensation should be attractive in dramatic- format. The serious news reporting is nowhere to be found. Issues like common masses ex, poverty. Healthcare, education, income inequality and climate change is no longer view ship friendly, neither simply nor a TRP material. Politics too now largely presented as kind of entertainment.<sup>1</sup>

This corporatization of media as industry which now focuses on the TRP and maximum view ships really in the vital reason for death of dream of the independent press as now media is a business and business always dream compromises and these are necessary to sustain any industry and just focus on the comprise with the quality, honesty and fairness of news by collaborating and supportive to the powerful in exchange of certain benefits that gives anyone, who is in power of a partial dominance over the media and kills the element of fairness. Corporates

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<sup>1</sup> Jagannadha Rao, Fair Trial and Free Press: Law’s Response to Trial by Media,

turned into media on public polarizing on the every issue from religion to serious issue like rape, media through the dramatic viewing experience and the power sensitising the news into the drawing rooms and bedrooms of people house set foundation of polarized society and where guilty and non-guilty, is been settled in TV studios by calling both sides into a heating debate and then public reacts and gives birth of notion called Media trial.

## **MEDIA TRIAL RULE AND CASES**

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It is essential for the maintenance of 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 check and balances so as not to interfere with the administration of justice.

The issue of Trial by Media was exhaustively dealt with by the Hon'ble Supreme Court in the case of **R.K. Anand Vs. Delhi High Court** when it observed and I quote as under:

"..... What is trial by media? The expression "trial by media" is defined to mean:

The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny....."<sup>2</sup>

Media trial is largely affecting the personal life of people just in order to create larger audience and to gain more attention this recklessness of media personals is putting the dignity and prestige of common people at stake which cannot be justified by any law. It is unthinkable to allow destroying the essential power and duty to protect fair trial of persons accused of crimes because this is an extreme form of 'trial by media' who usurps the function of the Court without the safeguards of procedure, right to cross examine etc. and such publications prejudge the facts and influence the Court, witnesses and others. By and large, while Judges may generally be impervious to influence, the possibility of such influence could not be ruled out altogether. Publishers, Editors/ Script Writers, Producers, Directors, Broadcasters and Journalists who are

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<sup>2</sup> R.K. Anand Vs. Delhi High Court



responsible for the articles and telecasts which interfere with course of Administration of Justice while indulging into trial by media when the issue is sub-judice, can be made liable.

There is one such case where public servants who no more have met somewhat similar fate, being victim of trial by media. They have already been condemned and convicted in the eyes of public. Instance of such a trial is of Daler Mehandi whose discharge is being sought few days after his humiliation and pseudo trial through media as they have not been able to find the evidence sufficient even for filing the chargesheet. Does such trials amount to public service is a question to be introspected by the media itself."

In the case of Satyaveer Singh Rathi vs M/S. Zee Television Ltd the court said 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.<sup>3</sup>

Court giving reference of Anukul Chandra Pradhan v. Union of India said that-

It is essential for the maintenance of 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 check and balances so as not to interfere with the administration of justice.<sup>4</sup>

It is the truth that the reach of media is tremendous be it print media or electronic media and it's not only about present times even earlier the reach of media was tremendous though the means were different, media covers a very large number of audience and people blindly follows it because they consider everything that is shown by the media as reality and they form their judgements and opinions regarding the issues which are shown in media. So it is very important that the media should exercise its duty in public interest and always look for public interest.

There are many cases in which it is clearly reported that the whole judgement of the case was influenced by the media and the proceedings of the court were not held properly due to media pressure and alos because of the chaos created by media that people got highly influenced by it and have formed a judgement before the actual judgement which highly affects the reputation of an individual in the society

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<sup>3</sup> Satyaveer Singh Rathi v. M/S. Zee Television Ltd on 23 January, 2016

<sup>4</sup> Anukul Chandra Pradhan, ... v. Union Of India & Ors on 9 July, 1997

In the case of **Jitendra Kushwah vs The State Of Madhya Pradesh** it was clearly believed that whole incident was rushed through under the media pressure to save the actual culprit and accused Jitendra Kushwaha has been falsely framed.<sup>5</sup>

So even in this case the media formed its judgement before the actual judgement and the convict has to suffer even though he was given clean chit from the court but his reputation was all spoiled by media by accusing him and presenting him as culprit before the actual judgement of the case.

Considering the most talked about **Sheena Bohra murder case**, in this case also the whole personal life of Indrani Mukherjee , her husband, her step-son, her daughter and so on have been completely pierced by media in the eyes of public. Every aspect of her personal life and not just her personal life but the media also interfered with the personal life of all the people related to it; media has completely brought everything before the eyes of world audience and those things which had nothing to do with the case legally and investigation of murder

Also in **Arushi Talwar muder case**, the media itself declared that her father Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder though the CBI later declared that her father was not the killer, but as talked about previous cases here also media formed its own judgement before the actual judgement and present the same before the eyes of the people.

The above cases reveals the reality of media trials in India and is an analysis of some of the talked about cases in India. An ideal proposal will be that the Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process. It's definitely an ideal proposition to allow controlled media reporting of the cases once the media is supposed to come out of the profit and sensational considerations. The media has to play the role of a facilitator rather than tilting the scales in favour of one or the other party.

## **JANTA ADALAT IN THE STUDIO**

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When news becomes entertainment and their studios turned into public court this is prime indication that something is creepy about how things going and this is only Media trial. This phrase get popularize in the late 20<sup>th</sup> Century and early 21<sup>st</sup> century describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before or after a verdict in the court of law, Media trial is seen as very ugly

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<sup>5</sup> Jitendra Kushwah vs The State Of Madhya Pradesh Thr on 25 October, 2018

side of media and press where aggressive journalism started to impacting minds of learned judges in our courts. Media care with emotions in the public through a viewing experience in the prime time hour this attract viewership in millions but in madness of counting TRP, media forgets how it partially might making an innocent person guilty even before his case is heard in the court law. From identifying the killer in the Aarushi murder case to irresponsible reporting in the famous Jessica Lal Murder case.

The trend of increasing media trial can be found more in developing countries where people trust on judicial system are is shaking due to pendency problem, lack of judges and delay in justice and this legitimize the notion of “Janta Adalat”. The most detail and talked about the case in context of Media will always be Jessica Lal Murder case. Even in this only Supreme Court comprising of Justices P. Sathasivam and Swatanter Kumar in their judgment the duty and role played by the media while reporting a case was brought out stating 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 Top posed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21”*** As the facts of this case Jessica Lal was a 34 year old Model and used as a celebrity bartender at the Tamarind Court restaurant in Mehrauli. One day night, A 24 year old man Manu Sharma offered her a drink and money at 2 o’clock, But she refused. Then with the sudden sound of 2 bullets she found to be dead. Witness identified Manu Sharma as killer. He had very influential background, for which near about three hundred attenders of the party tried to escape taking the responsibility of the witness. The three key witnesses were either bribed or threatened. This case exposed the big loopholes in the Indian criminal justice system as all accused got released by using both power and money. Justice to Jessica was not delivered but denied. This fate of injustice spread like wild fire everywhere as everyone came together from media to public and urged petitioner to challenge the case in High court and ask for an fast track hearing. Media and activist appealed the President to ensure the justice. In this case, eminent lawyer like Ram Jethmalani was heavily bashed by the media and public for taking the case of accused Manu Sharma, News media like CNN, IBN called Jethmalani’s move as “defend the indefensible”. Media was seen clearly making Jethmalani accountable even after the trial court released the accused. Media too heavily attacked court by calling it “miscarriage of justice’ The case got more fire as the candle marched as organized and people gathered in front of India gate , Investigative media like TheLoka even

carried out the sting operation and revealed how witness were bribed this story broadcasted by Star News. “NO ONE KILLED JESSICA” by Hindustan times became splashing headline of that time. Hindustan times gone further and carried the public poll and where it showed only on the scale of 1 to 10, only 2.7 was the score of people trust in the judiciary. This mounting pressure of media and public finally result in the judicial acted and justice delivered to the Jessica. This case is the classic example where corruption in judiciary got exposed and also how political and money did its role inside courts. This case also proves how Media trial works and in case it did work positively and helped in the delivery of justice.<sup>6</sup>

### **PUBLIC PARTICIPATION:**

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Some scholars justify a ‘trial-by-media’ by proposing that the mob mentality exists independently of the media which merely voices the opinions which the public already has. In a democracy, transparency is integral. Without a free press, we will regress into the dark ages of the Star Chambers, when the judicial proceedings were conducted secretly. All these omnipresent SMS campaigns and public polls only provide a platform to the public to express its views. It is generating public dialogue regarding issues of public importance. Stifling this voice will amount to stifling democracy.<sup>7</sup>

Quoting Jeremy Bentham, on secrecy in the administration of justice,

*“In the darkness of secrecy, sinister interest and evil in every shape are in full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.”*

### **CONCLUSION**

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Though media act as a platform to bring voices to the society and platform but these days it isn’t happening. Media is only focusing on the TRPs. For that they are ready to do anything. Sometime they don’t bother to defame someone. From the above account it is clear that there are pros and cons of Media Trial. If the medias are properly regulated then it can be very useful

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<sup>6</sup> HRF164.htm accessed on 10th June 2008.

<sup>7</sup> Nature of the Judicial Process’, Lecture IV, Adherence to Precedent. The Subconscious Element in the Judicial Process, 1921, Yale University Press.

these days. media act as a mediator and act as a platform to bring people voice to the notice of society and legislatures. But now days media is so much sensationalized and they just do for their salaries and TRP's. there are few reporters those showing only those news for what they have been paid by political parties. From the above account it becomes clear that the media had a more negative influence rather than a positive effect (except for a few exceptions here and there). The media has to be properly regulated by the courts. The media cannot be granted a free hand in the court proceedings as they are not some sporting event.

A free press is one of very important pillar on which the foundation of rule of law and democracy rests. At the same time, it is also necessary that freedom must be exercised with utmost responsibility. It must not be abused. It should not be treated as a licence to denigrate other institutions. Sensationalism is not unknown. Any attempt to make news out of nothing just for the sake of sensationalism has to be deprecated.