

# Medial Trial

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## **Introduction:**

In an era of Information technology where media is no more a factor, but act as a phenomenon that regulates the masses. The media has undoubtedly evolved and become more dynamic from the era of waiting for the newspaper editorials on the desk in mornings to getting the pulse of world event with just the click of a mouse. The perfect blend of media has not left a single stone unturned in unearthing rampant corruption in politics and society, making it worth entitling as a fourth pillar of the state. Whereas the other three pillars that are The Executive, Legislative, and the Judiciary are interdependent due to the diluted form of separation of powers, the fourth media continue to exist and outlast as an independent model. Media is like a mirror, which shows us or strives to show us the bare truth and harsh realities of life. The role of media is no less on the scale of making and breaking the opinion of people. It has the capacity to swing perceptions or evoke emotions. This is what it has gained – faith of public.

There is no doubt in admitting the fact that the media is more or less is like a drug which changes the brain to foster compulsive flimsy or unproven information which in turn impair the ability of a person to make the sound decisions. It has been seen in many of the High-Profile cases that the Media has given its own verdict prior to the judgment of the court concern. The separate investigation leads the media to do the research and give the adjudication in cases and the level of interruption in High Profile cases reaches to such an extent where media turn itself into the public court and gives the verdict regardless of minding the gap between the convict and the accused.

## **Media Trial in High Profile Cases:**

*Salman Khan Accident case*, where media alleged that Salman was behind the wheels and driving the car that runs over the people on the pavement. Salman Khan once even accused media of being the reason that his case had still not reached the conclusion. Media left no stone unturned in the personal life of Khan from the cases related to him to the charity forum created by him. The media went on to claiming that his charity forum was set up mainly to divert the negative attention of his various criminal actions in the infamous hit-and-run case and the illegal poaching of the black buck species case. It was meant to create sympathy for Salman Khan as a 'noble person' involved in charity work. And that his charity really worked wonders in favor of Salman Khan in his various trials. The Bombay High court verdict says there's not enough evidence to prove actor Salman Khan was inebriated and the prosecution "failed to establish the charges beyond the reasonable doubt" thus putting an end to the 13 years long case.

The Indian Judicial System has always been under great scrutiny from the public and a greater part of India believes that the judiciary is inefficient at best, and is unable to effectively deal with the multitude of cases, especially the high-profile cases which attract the public at large. There have been instances in the past where the judiciary has been unable to take any strong action against the well-connected offenders and they have walked away scot free. The need of the hour is thus to set an effective example by successfully prosecuting and punishing a well-connected person to re-instill the faith of the public. However, does not justify the unjust prosecution and extra punishment to be provided to any celebrity only because an example needs to be set because that would be unjust to him.

The freedom of the press is implicitly guaranteed under Article 19(1)(a) of the Indian Constitution and has a strong hold in molding the public opinion through its coverage of events which was seen in the *Noida Double Murder case* of 2008. Aarushi-Hemraj murder mystery took a different twisted turn after the body of Hemraj, who was first suspected of murder Aarushi, was found dead on the roof of their house. Within the hours of the murder, several media crew and reporter checked in and out of the Talwar house, trampling all over the evidence. The media barefacedly telecasted the news about the sexual relationship of Aarushi and the Talwar's male servant Hemraj and the relationship of her father with a co dentist. Even as the investigation began, a senior police official told reporters

that Aarushi was "characterless". The excesses of the media prompted the supreme court to warn the media about the coverage of the case, and refrain from cossetting in the character slaying of the girl and her father.

The verdict was based on circumstantial evidence as key forensic evidence had been lost during two flawed investigations, first by the local police and then by Central Bureau of Investigation. In a 201-page verdict, the judge found the Talwars guilty, saying that the crime was "fiendish and flagitious", and that "there have been freaks in the history of mankind when the father and mother became the killer of their own progeny". He gave 26 reasons to explain why he concluded that the couple had committed filicide. The Talwars were sentenced to life in prison.

In another nation, shocking case of *Delhi Gang rape* in 2012, a 23-year-old female was beaten and gang-raped in a bus in which she was traveling with her male companion. There were only six others in the bus, including the driver and a juvenile, all of whom raped the woman. The woman was admitted to a Hospital and was placed on mechanical ventilation. She since had several surgeries performed, she was moved to Singapore for further treatment. The victim continued to be in a critical condition and died on 29 December 2012 at Singapore hospital after suffering severe organ failure. During the trial, the prime accused in the case Ram Singh was found dead in Tihar Jail. The juvenile accused was convicted and sentenced to a maximum of 3 years for reformation in Juvenile Justice Board. And the Supreme court in July 2014 further orders the execution of death penalty of two of the four convicts. Although the gravity of offence exceeded the threshold of any standard punishment yet there is no deny the fact that media, here again, pushed its limit and turned its "debating session to judgment session", which was so reflected in the appeal of Justice Kurian, in a meeting held by the Bar council of India, where he appealed the media to stop trying the cases in media till the case is over.

"Never try a case in the media, it creates a lot of pressure on judges, they are also human beings" — **Justice Kurian**. He recalled how a judge who had adjudicated the Nirbhaya rape case had once told him: "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." Although the Judge who decided the case, had strong reasons to give the verdict, still the media has hassled the judge to a greater extent totally condoning the fact that judges are humans as well not the semi-permeable membrane.

In *Express Newspapers vs. The Union of India*<sup>1</sup>, this case concerns writ petitions challenging the levy of an import duty on newsprint. The petitioners contended that the duty led to an increase in the cost of newspapers and a drop in its circulation, thereby adversely affecting freedom of speech and expression. The Supreme Court held that freedom of the press cannot be unbridled. Like other freedoms, it can also suffer reasonable restrictions.

In *200<sup>th</sup> Report On Trial By Media*, it was stated that the subject of 'trial by media' or prejudice due to 'pre-trial' publications by the media is closely linked with Article 19(1)(a) which guarantees the fundamental right of 'freedom of speech and expression', and the extent to which that right can be reasonably restricted under Article 19(2) by law for the purpose of Contempt of Court and for maintaining the due process to protect liberty. The main issue is about maintaining equilibrium between the freedom of speech and expression on the one hand and undue interference with the administration of justice within the framework of the Contempt of Courts Act, 1971, as permitted by Article 19(2). That should be done without unduly restricting the rights of suspects/accused under Article 21 of the Constitution of India for a fair trial.

There is no difficulty in stating that under our Constitution, the fundamental right of freedom of speech and expression can, by law, be restricted for purposes of contempt of Court. However, this can be done only by a law passed by the Legislature and the restrictions that can be imposed on the freedom must be "reasonable". If the restriction imposed by any law relating to contempt of Court is unreasonable, it is liable to be struck down by the Courts on the ground that the restriction is not proportionate to the object sought to be achieved by the restriction.

Through the conventional analysis, it can be concluded that Freedom of expression and fair trial can't be fully assured, it is appropriate for our democratic and free society to curtail the freedom of media express so as to guarantee free trial.

The media monster has bared its fangs once again in the wake of *the Jawaharlal Nehru University (JNU) controversy* aroused by the shouting of slogans, which were branded "anti-national" by the media and significantly six students were charged with sedition. The controversy rests on a video showing masked figures shouting anti-

<sup>1</sup> *Express Newspapers vs. The Union of India* 1959 SCR 12.

India and pro-Pakistan slogans. Media invited the JNU students on their show to discuss anti-India slogans that were shouted in JNU campus. While the credibility of the slogans remains to be deciphered, Media chose to brand the students as anti-nationals and stitching together a dark story of a campus that runs on taxpayers' money and "squanders" its subsidized education in "unpatriotic" acts.

With the introduction to the life sacrifice of **Lance Naik Hanumanthappa**, (a brave heart soldier who passed away after being rescued from ice and snow in which he was buried for six days in Siachen Glacier), the media invokes the sensitivity of people to the controversy and the damage to JNU students had already been done. A damage that looks too deep to be undone in the foreseeable future.

**Chief Justice Kabir** told in an event at Chanakya National Law University function stated that "Media trial is a matter of serious concern. In my view, it should not be held. Media trial creates a perception of prejudice against the accused. Judgment should be delivered in court only".

### **Conclusion:**

The citizens of India are all used to media trials. As the one hour debating session in the news studio in which the allegations to the accused is framed and discussed, followed by the instant verdict given by the news anchor which is, definitely, more captivating, amusing, and simple to the masses rather than the multifaceted and prolonged judicial procedure established by law of Indian judiciary, to which the most citizens are unaware. The anchors in the news studio more or less started acting as both prosecution and judge — scolding, smirking, shouting, pronouncing verdicts.

The first Prime Minister of Free India, **Pandit Jawaharlal Nehru**, while delivering a speech at the Newspaper Editor's Conference, said that "To my mind, the freedom of the Press is not just a slogan from the larger point of view but it is an essential attribute of the democratic process. I have no doubt that even if the government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the Press. By imposing restrictions, you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, 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."

Thus, due to mainstream media, the dream of our first prime minister Nehru of a building such a utopian nation seems too unrealistic and that the remark of **Lord Acton**, "Power tends to corrupt, and absolute power corrupts absolutely" seems more accurate and surpasses the very known dream of Pandit Nehru.

Though Indians has the fundamental right to freedom of speech and expression along with the freedom of the press which is implied from the Article 19(1) (a) but, the limitations to its absolute freedom are stated in its very next clause. Media was provided with freedoms and immunities so that this fourth pillar of democracy stands tall and strong. However, the Trial by media due to self- manifested stories, half- baked truth has resulted in not only the violation of the right of individuals but also transforming the news studios into the Jaan Adalat. In the era were judiciary believes to have a slide edge over the executive and legislative, it's the media which greater influence over the other three. Thus, merely putting a question mark after the statement-cum-adjudication in the breaking news headline doesn't leave the media with clean hands.