SURVIVAL OF THE ACCUSED AND HIS RIGHTS THROUGH MEDIA TRIAL

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ABSTRACT
The right to fair trial of an accused has been eclipsed by the media these days. A media trial declares an accused guilty even before a chargesheet is filed in a case. As the media has started running its own court, the presumption of innocence until proven guilty is lost. It is said that no stigma should be attached to an individual as “guilty of a crime” until he is tried. But, by the time the court’s verdict comes, the accused is already presumed guilty. Now, a media trial decides the culpability of the accused on unfounded and warranted allegations. That’s why a trial by the media is often prejudicial to the case of the accused. Parties in this case, barely survive through these harsh parallel trials. The chaotic mass of facts and circumstances reported by the media even creates a cosmic amount of pressure on police officers and courts. Undoubtedly, freedom of the press is necessary, but when it is assumed as liberty to conduct sheer media trials, it creates an imbalance in society. This paper shows how the freedom of speech and expression of the media has overshadowed the rights of an accused. Further, it covers how the media strangulates the life of a person who is not proven guilty yet. The impact of the media on a case is covered right from commencement of investigation till evidence of defence is recorded. Further, few instances of irresponsible investigative journalism are discussed.

Key words: Accused, Media-trial, Presumption, Rights.

1. INTRODUCTION
The media is considered as an integral part of democratic society. It is the responsibility of the media to report about facts and happenings around the globe. Therefore, the media needs to be independent and unbiased in its functioning. Freedom of the media has been envisaged under Article 19(1)(a) right to freedom of speech and expression. Freedom of press and media as a right originated from fundamentals of a democratic society. But the problem begins when the media misuse the freedom and power granted to them. The media in the race of being the top news reporter puts the life of to the accused at stake. The media is seen meddling with the court proceedings and has started depicting itself as the court of public.

2. MEDIA TRIAL
What is happening nowadays is that the media conduct the investigation, trial and declares a person guilty on its own, thus conducting a media trial. Basically, it is a process by which the media declares one ‘guilty or not guilty’. The media pins the guilt on a person and then drags him in poor light to no end. The media is such a platform which holds a prominent role in influencing the world. The way the media frames an adverse belief about a case affects not only public opinion but judges’ opinion too. By way of trial, the media influences the public opinion against the accused before the court decides the case and sometimes even before a case is filed. A media trial leads the accused to be presumed as a culprit who would rather be
presumed innocent until proven guilty. The person under suspicion immediately becomes a criminal without having an opportunity of being heard. Such innocence of the accused stands nowhere though the court hasn’t declared him guilty yet. The accused is already a criminal, despite the fact he has not exhausted the remedies available to him as established by law. There are even times when a trial by the media results in excessive publicity against the accused or suspected person which results ultimately in his characterization.

3. ISSUES WITH TRIAL BY MEDIA

The media is praised by the public for its achievement in justice. But the unfettered media alters the true facts of any matter for TRP. The media, in the greed of bringing the most sensational news, publish their own version of facts. News Reporters stoops so low that they have no space for the restrictions imposed on the right to freedom of speech and expression.

Media trial is a huge problem which needs to be tackled in a democratic society. It gives birth to two conflicting principles and ideologies, which are ‘freedom of the press’ and ‘fair trial’. Public lives are impacted by both of these principles. Freedom of press as a fundamental right is envisaged in the Indian constitution. Often this right is used by, media as a justification for investigating and campaigning against an accused. On the other hand, taking into consideration the golden principle of the criminal justice system, trial must be free and fair; it should not be influenced by any external factors. As we all know about the golden principles of criminal law like ‘proving of guilt beyond reasonable doubt’ and ‘presumption of innocent until proven guilty’, our media has completely sidelined these principles. It has forgotten that there exists a wide gap between an accused and a culprit. The media ignores the legality of the issue by not taking into consideration the golden principles of “presumption of innocence until proven guilty” and “proving guilt beyond reasonable doubt”. Moreover, the after effects of a media trial are even worse because the accused even after being acquitted faces the baseless allegations. Despite the acquittal, public opinion does not change and retains the same clutter which conveyed by the media. The media trial before the trial in court in turn affects accuser’s trial. This whole process along with media trial can be termed as double victimization or jeopardy.

The trial by the media is not only prejudicial to the case of the accused; it even affects the opinion of the judges. As judges are human too and as no one is impartial and it may be possible that it influences the opinion of the court. The media hype the case and creates an enormous amount of pressure that naturally get an individual into the trap of bias. Can we genuinely expect that a judge would deliver a fair judgment after being subjected to a tremendous amount of pressure. Recently, the trend is to hold an accused as guilty right from the time of arrest. There are various cases in which the media publish or broadcast items which are prejudicial to the interest of the parties, like certain photographs, assassinating the character of the parties or criticism of the lawyers or the witnesses, thus infringing its right of freedom of speech and expression. No principle of presumption of innocence unless held guilty is being followed.
Therefore, trial by the media is an unjustified and unreasonable process. The role of the media is not to pass judgments, instead to reporting cases. It is a niche practice of the media hampering the life of people involved in a case in one or other way. These actions by the media call for contempt proceedings against them because it interferes with the procedure of the court of law, thus causing miscarriage of justice. Unfortunately, rules which are framed to regulate the conduct of the media and journalists are not adequate enough to prevent the encroachment upon basic fundamental rights.

4. ACCUSED’S RIGHT TO FAIR TRIAL

The right to fair trial for each and every accused person is the bare minimum requirement. Every civilized and democratic nation must have the right to fair trial as a common rule of prudence in its criminal justice system. It is important to both society and the accused when the trial is conducted in a free and fair manner. The ‘Right to Fair Trial’ originates its validity from Article 21 the Right to Life and Personal Liberty guaranteed under the Indian Constitution.

The need of the hour is to bring a balance between both the rights, i.e. “right of the accused of to a fair trial” and the “right of freedom of press and free speech”. Presently, it can be seen that this concept of trial by the media has created a “tug of war” like situation between these two rights of freedom of press and the right of fair trial. The justification which is given by the media for the complete freedom to be granted to the press is because of people’s right to be involved in day-to-day issues affecting them in one way or the other. The media is twisting, distorting, sensationalizing and prejudicing the facts of the case. The media is taking up the role of the judge and is seen to override the criminal justice delivery system. Because of the concept of trial by the media, the rights of the accused of fair trial are crushed, causing the travesty of justice. It is very important that a fair trial must be guaranteed to the people for the proper functioning of the administration of justice. Confidence of the public will be shaken and the ‘justice delivery system’ will be at risk, if there is any sort of biasness or impartiality seen in the free or fair criminal trial system.

A dig at international perspective regarding principles of criminal justice system, shows that the ‘Article 10’ of the Universal Declaration of Human Rights’ states as “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Further, ‘Article 11’ of UDHR states that “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

Courts in India also over the period of time have observed the basic principle of Free and Fair trial. In Zahira Habibullah Sheikh v. State of Gujurat¹, apex court stated that “a fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial claim. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which

is being tried is eliminated.” Moreover, In Amarinder Singh V Prakash Singh Badal\(^2\), it was held that “the right of the press to free speech should be balanced with an equally significant right of the accused to a fair trial. Assurance of the fair trial is the first imperative of the dispensation of justice. Free and Fair Trial is the sine qua non of Article 21 of the Constitution of India. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking confidence of public in the system”\(^3\).

The Supreme Court of India also in T. Nagappa v. Y.R. Muralidhar observed that “an accused has a right to fair trial. He has right to defend himself as part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India”\(^4\). The reading of the above mentioned case laws clearly shows that the right to free and fair trial derives its existence from Article 21\(^5\).

5. ACCUSED’S PRESUMPTION OF INNOCENCE

In common law countries and even in other civilised societies, there is a well-established principle of “presumption of innocence”. It is necessary that an accused should be treated as an innocent person until and unless he is prosecuted and convicted in a court of law. Even in the Indian legal system, it is presumed that an accused is presumed to be innocent until and unless he is convicted in a criminal trial. This principle, in general parlance, means that each and every accused is presumed to be innocent until and unless he is proved guilty in a competent court of law.

No stigma should be attached to an individual as “guilty of crime” until he is prosecuted and proven to be guilty by the verdict of the court. No agency is allowed to declare an individual a criminal other than the competent authority. The honorable Supreme Court has stated in State of U.P. v. Naresh and Ors\(^6\), that “no person shall be punished or sentenced unless and until his guilt is proved beyond the reasonable doubt as the principle of presumption of innocence prevails”.

The Apex court stated about the danger incurred by media trial in Manu Sharma v. State (NCT of Delhi)\(^7\), as “Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever.”\(^8\) In Anukul Chandra Pradhan v. Union of India\(^9\), the apex court stated that “there should be a system of check and balances in reporting and or even the criticisms regarding matters which are sub-judice in nature so as not to interfere in the functioning of the court”.

Another golden principle of a free and fair trial is ‘proving of guilt beyond reasonable doubt’. The most important element for proving guilt is that it should be proved “beyond reasonable doubt”. The burden of

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\(^3\) Ibid.
\(^5\) INDIA CONST. art. 21.
\(^8\) Ibid.
proof lies with the prosecution to prove that the accused is guilty and that the allegations are true. Even an iota of doubt would render the accused innocent person. The burden of proving an accused as the culprit is very heavy because there is no scope for even a minor doubt. But nowadays because of media trials, this right has been violated a number of times as media creates immense amount of pressure on the judges. Infringement of these golden principles by way of trial by the media indeed leads to a miscarriage of justice.

Therefore, the approach of the courts is seen as more careful and cautious when they take into consideration the people who are still facing charges. It is because any material or data which touches upon the innocence or guilt of the person accused would strangle the investigation and affect the trial. All such instances would affect the right of the accused to have a fair trial and, as a result, leads to the inadequate and frail disposal of the case.

6. ARUSHI TALWAR MURDER CASE

This case is popularly known as the Noida Double Murder case. It saw various up down scenarios during the proceeding. With each passing day, situations and circumstances relating to the case kept changing. News headlines and bulletins everywhere were filled with “Breaking News” headlines. Media trials gave the verdict against the parents of the deceased victim. They were declared the main culprits, and the media dragged them into poor, bad light. At start of the every other day, all TV news channels were seen anticipating the proceedings that were probably going to happen for that day and thereafter delivering particular order which according to them court should pass. Several mysteries of this case remain unsolved.

It is a case where a 14 year old girl, Aarushi, and her domestic help, a 45-year old Hemraj Baanjade, were murdered. Aarushi’s parents, Dr. Rajesh Talwar and Dr. Nupur Talwar, had only one child and they had a domestic worker who stayed with them in Noida. On May 16, 2008, the dead body of Talwar’s daughter Aarushi was found, and the main accused at that point of time was their servant Hemraj, as he was missing. But two days after the murder of Aarushi, Hemraj was found dead on the terrace of Talwar’s flat.

Soon after the news went viral, various media personnel were seen going in and out of the crime scene. It evidently resulted in distortion of evidence which could have probably helped the investigating team. Police were heavily chastised for failing to secure the crime scene due to unrestricted media coverage. Later on, when police recovered the body of Hemraj, Rajesh Talwar was considered the prime accused as it was claimed that Rajesh murdered both the daughter and servant after finding his daughter Aarushi in an “Objectionable Position” with the servant Hemraj. And the second theory is that Aarushi confronted his father, Mr. Talwar of alleged extra-marital affair which led to his blackmail by Hemraj. Thereafter, Rajesh Talwar was arrested by the police on May 23, as a suspect in the murders of both Aarushi and Hemraj.

There was an article in the Times of India on May 24, 2008 titled “Aarushi resented affair”10 with no question mark in which was stated that Rajesh Talwar had an affair with

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his colleague whose name was mentioned thus infringing the privacy of that lady. It is claimed in the article that Aarushi got to know about the alleged affair, which she resented and was thus subjected to death by her father. Some media houses claimed that the deceased came to know about the dark secrets of her parents as they stooped so low that they did “wife swapping” with friends. “On April 24, 2011 the Times of India carried the sensational headline: “Only Parents Could Have Killed Aarushi”. Further, On May 25, 2008, Zee News telecast a show called Crime File, where an anchor doubling as a mind-reader authoritatively claimed that Aarushi had sought comfort in an affair with Hemraj because her father was having an extra-marital affair. The lurid story was accompanied by graphic fictional reconstructions. A lack of ethics has distinguished Zee News. All these bulletins, media reports, prime time shows and articles severely affected the dignity, privacy and reputation of the deceased Aarushi, Hemraj, the family, and all the people involved or mentioned by the media to be involved in the case and such wrongdoing. The mindset of the media was clearly to portray Aarushi’s father, Rajesh, as the culprit even before the court’s verdict. These are some of the headlines and stories that were broadcast on the media platform.

After a lot of hue and cry by the media and the public regarding the improper handling of the case by the police, the case was transferred to the CBI. The CBI on July 11, 2008, said that the parents were innocent and suspected other three people namely Krishna Thadarai, who was a compounder at Rajesh Talwar’s clinic, Rajkumar, who was the servant of Rajesh’s friend, and lastly, Vijay Mandal, who was the domestic help of Rajesh’s neighbor, and the said suspicion was based on a narco test. But all three men were released later due to a lack of any solid evidence. In September 2009, the probe regarding the murder was handed over to a new team of the CBI. This new team again inspected all the evidence recovered from the crime scene, investigated all the suspects, and questioned witnesses. After proper meeting and consultations with previous team, the new team came to a conclusion different from the previous CBI team. It recommended the closure of the case as there was a lack of strong evidence against the Talwar’s and the other three domestic help even after the narco test and the polygraphic test. Previously, Rajesh Talwar was suspected to be the sole accused in the case on the basis of circumstantial evidence but the CBI refuse to charge him due to lack of evidence. Aarushi’s parents interestingly opposed the closure of the case by the CBI and also told the allegations against Rajesh Talwar are baseless. On 29th December, 2010 the new team of CBI filed the closure report in the special court but the court rejected the closure report in the murder case and ordered a trial against the parents.

On November 25, 2013, the court declared Rajesh Talwar and Nupur Talwar guilty of the murder of their daughter and servant Hemraj and sentenced them to life imprisonment. The Talwars then filed an appeal in the Allahabad High Court against the judgment of the special court. On October 12, 2017, both Rajesh and Nupur Talwar

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were acquitted\textsuperscript{12} by the honourable high court because the evidence against them was not satisfactory and the prosecution failed to prove the guilt of the accused beyond reasonable doubt.

When all this was happening, there was another trial taking place against all the accused involved, popularly by the Media. This case saw huge media coverage. Almost each and every news channel, including both print and electronic media was flooded with the headlines of Aarushi Talwar’s murder case. Other than the murder, one thing which came into limelight was the insensitivity with which the media broadcasted. They reported each and every piece of sensitive information relating to the crime. Irresponsible journalism killed all the rights and somehow, even the life of the accused. Even the privacy and dignity of the victim, the deceased Aarushi, were hampered by the media houses as constant allegations were seen to be made against her character.

7. CONCLUSION

The Media derives its freedom from the fundamental right to freedom of speech and expression. Constitutional restrictions are sometimes disrespected by the media. Media conducts the sheer irresponsible investigative journalism. Trial by media for TRP inflicts severe scars upon the accused. In the above instances, the media can be seen misusing its freedom and violating the grundnorms of the criminal justice system. The lives of accused and victim are put in a bad light, thus violating the constitutional right to life and privacy. The Media strangulates the lives of people who have not been proven guilty yet. The Parties in this case barely survive these harsh parallel trials. There is an undeniable and non-negotiable interference of media and press with the due administration of criminal justice. The over exercise of freedom of speech by the media must therefore be discouraged. Even the Hon’ble Supreme Court has time and again reprimanded the media and press houses. The apex court in \textit{A.K. Gopalan v. Noordeen}\textsuperscript{13} held that “a publication made after ‘arrest’ of a person could be contempt if it was prejudicial to the suspect or accused. Despite that, media are caught imposing unwarranted allegations and conclusions in a case. Hence, the unfettered and uncontrolled practise by the media needs to be curtailed. This is the need of the hour that authorities come up with stringent provisions so as to strike a proper balance between the rights of the press and the rights of the accused.

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