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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **MEDIA LAW AND THE RIGHT TO PRIVACY**

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## **ABSTRACT**

This study will focus on cases related to investigative journalism, while trying to focus specifically on the case of the death of the actor Sushant Singh Rajput, analysing how the media is handling the matter which is sub judice. Whether the media is covering the case while maintaining its ethical and legal boundaries or not. Therefore, the analysis will be limited to the thorough research of a small number of case studies.

The author shall be adopting a Doctrinal Approach to carry out the research, and therefore, will employ a combination of historical, exploratory, descriptive and analytical study. The study is non-empirical, while thereby the research will be limited to the utilization of secondary data. The author will refer to books, articles, research papers, relevant statutes and landmark judgments, newspaper reports, committee reports, opinions and work of scholars and authenticated online articles for his research. Optimum use shall be made of all the available books and other literatures that are found resourceful. A major portion of the research shall be done on the Internet, as most of the theoretical data is available only in the form of articles in legal and institutional databases.

However, it has been determined that "freedom of the press" is a component of the Fundamental Right to "freedom of speech and expression" that Indian citizens are given by Article 19(1)(a). For this reason, it cannot be said that freedom of the press is invalid or unconstitutional. Additionally, as stated in the constitution, this can only be used as long as it doesn't compromise someone's morality or decency. The freedom to press is guaranteed by the constitution, however there are restrictions. Amended Article 19(2) on June 18, 1951, adding the word "reasonable" to the list of limitations. Stated differently, it shouldn't be overly or inappropriate.

We will talk about the scope of press freedom and how it affects the right to privacy in this research paper.

## **OBJECTIVES OF THE STUDY**

The objectives of the study shall be as follows:

1. Defining the scope of Right to Privacy under Article 21 and Freedom of Press under Article 19(1)(a).
2. Evaluating the impact of investigative journalism on the person in question and on the investigating body for making the decision.



## **HYPOTHESIS**

The laws regulating the media about investigative journalism should be made stricter and media houses should be held accountable in case the legal verdict clashes with the verdict they formed based on their investigation.

## **RESEARCH METHODOLOGY:**

The author shall be adopting a Doctrinal Approach to carry out the research, and therefore, will employ a combination of historical, exploratory, descriptive and analytical study. The study is non-empirical, whereby the research will be limited to the utilization of secondary data. The author will refer to books, articles, research papers, relevant statutes and landmark judgments, newspaper reports, committee reports, opinions and work of scholars and authenticated online articles for his research. Optimum use shall be made of all the available books and other literatures that are found resourceful.

### **RESOURCES REFERRED TO:**

- Books available in the cited library and online databases to acquire knowledge of the subject as well as to get closely acquainted with the subject matter;
- Extensive coverage of news, due to the very current nature of the topic under discussion;
- Online research conducted to understand the thematic intricacies and the latest developments in the field.
- Online research papers and articles.
- Case laws.

## **RESEARCH QUESTIONS**

- The author has come with an inclusive list of research questions that shall be addressed during the course of the study. The questions are as follows:
  - What is the scope of Right to Privacy under Article 21 and Freedom of Press under Article 19(1)(a)?
  - Do the media houses cross their ethical and legal boundaries to pump up their TRP.?
  - How can a bad investigative journalism lead to force the opinion of the media house on their viewers?
  - What are the legal remedies available in case of a breach in the legal boundaries?
  - What the impact of investigative journalism on the person in question and on the investigating body

for making the decision.

### **TENTATIVE CHAPTERIZATION**

- Introduction: With the aims and targets of this answer, the definition and essential components of the Article 21 (right to Privacy) and Article 19(1)(a) (Right to Press).
- Death of Sushant Singh Rajput: How the media houses have come up with a verdict of their own while the matter is sub judice. We will discuss some other case studies also and do a comparative analysis of the Supreme court judgments about investigative journalism with what is actually happening in Sushant Singh's case.
- Impact of investigative journalism on the person in question and on the investigating body for making the decision: What is the impact of this on the accused and on the investigating body (CBI) and will it affect the decision making of that body.
- Conclusion: The analysis will be streamlined in line with the principles of constitution by analysing different standards adopted by the courts. There will also be recommendations for further steps which could be taken under legal regimes with regard to the aspect of investigative journalism. Finally, a conclusion will be given regarding the results of this dissertation.

### **CHAPTER I**

#### **THE PUBLIC'S RIGHT TO KNOW:**

The Supreme Court clarified that the basic concept behind press freedom is the right of people to know. "The main function of the press, therefore, is to provide comprehensive and objective information on all aspects of the political social, economic and cultural life of the country," the Supreme Court said. It has a role to play that is educative and mobilising. It plays a major role in influencing public opinion.

The Chief Justice of India, however, noted that "press freedom means the right of people to know the right news," but he acknowledged that newspapers cannot read like an official journal and must have a tinge of "sensationalism, entertainment and anxiety."

"The Supreme Court recounted the merits of media publicity in the Bofors Case: *"Those who know about the incident will come forward with details, prevent perjury by bringing witnesses under public gaze and minimise crime by publicly voicing disapproval of crime and last but the least it promotes*

*the public discussion of important issues.”*

## **RIGHT TO PRIVACY: A LEGALLY PROTECTED INTEREST**

It is not easy to provide an exhaustive description of what the word 'privacy' means in law, because privacy is still a recent development in the field of law and the stream of its development is still in process. Theoretically, in every scheme of individual rights designed to benefit the individual and to preserve the centre of individuality, the right to privacy is obviously a crucial element in the relationship of individuals to a collective society. Privacy is a vague concept that covers different facets of human life, such as press privacy, unfair government regulation, etc. Reverence for one's autonomy over his affairs is most important precept in a civilised society. It should be an individual's utter choice over his character traits; over what he wants to reveal to the world.

## **THE LEGAL FRAMEWORK IN THE COUNTRY**

In the country's context, while there is no constitutional enactment expressly guaranteeing a general right to privacy, elements of that right are recognised by the Indian Courts as historically found in common law and criminal law; these include the principles of Section 228A of the IPC, 1860. Disclosure of the identity of the victim of such offences, etc. nuisance, trespass, assault, etc. In India, the right to privacy is extracted from two sources: common tort law and constitutional law.

## **PRIVACY UNDER THE CONSTITUTION OF INDIA**

According to the Indian Constitution, Article 21 is in itself a fairly harmless clause, i.e. "No person shall be deprived of his life or personal liberty except according to procedure established by law." Nevertheless the above provision was considered to include within its scope, inter alia, the right to privacy, "The Right to be let alone" as it was called by the Apex Court. In the case of *Gobind v. State of Madhya Pradesh*<sup>1</sup>, in which Mathew of the Apex Court cited the Preamble of the Constitution of India aimed at "assure the dignity of the individual" the notion of the right to privacy finds its genesis. Freedom of the press, on the other hand, is not specifically referred to in Article 19, but is held to derive from the general freedom of speech and expression granted to all people.

## **PRIVACY UNDER THE COMMON LAW OF TORT**

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<sup>1</sup> *GOBIND V. STATE OF MADHYA PRADESH, AIR SC 1378 (INDIA). 1975.*

A private claim for damages for wrongful breach of privacy is maintained under Common Law. The printer, magazine or book shall be liable for damages if without his permission, they publish any matter relating to the private life of a person that includes his family, marriage, procreation, parenthood, child-bearing education, etc. It is however, subject to the following exemptions:

1. Since the right of privacy no longer exists if a case becomes a matter of public records, whether the publication is focused on public records, like court records.
2. Where the publication of the accused relates to the actions and conduct applicable to the discharge of a public servant's official duties. - Unless it is proven that the publication is fraudulent or actuated by intent or careless disregard of the facts.

Sometimes it is insufficient to protect the privacy of the person if the privacy action is protected under the Tort of Defamation. There is a fundamental difference between defamation and the public exposure of embarrassing private information as a privacy tort. To the former, but not to the latter, is honesty is an absolute shield. The following observations of the Supreme Court in *R. Rajagopal and Another v. State of Tamil Nadu and Others*<sup>2</sup> are true reminiscence of the limits of freedom of press with respect to the right to privacy:

“A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing 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 to action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy”.

The ever-increasing tendency to use media while the matter is sub-judice has been frowned down by the courts including the Supreme Court of India on the several occasions. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*<sup>3</sup>, the Supreme Court observed:

“There is the procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of 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 rules of law. If he finds the person guilty of an offence, he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law”.

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<sup>2</sup> R. RAJAGOPAL AND ANOTHER V. STATE OF TAMIL NADU AND OTHERS, WRIT PETITION (C) NO. 422 OF 1994

<sup>3</sup> STATE OF MAHARASHTRA V. RAJENDRA JAWANMAL GANDHI, CRL. A. NO. 838 OF 1997

The Hon'ble Supreme Court in the case of *Rajendra Sail v. Madhya Pradesh High Court Bar Association and Others*<sup>4</sup>, observed that for rule of law and orderly society, a free responsible press and an independent judiciary are both indispensable and both have to be, therefore, protected. The aim and duty of both is to bring out the truth. And it is well known that the truth is often found in shades of grey. Therefore, the role of both cannot be but emphasized enough, especially in a 'new India', where the public is becoming more aware and sensitive to its surroundings than ever before. The only way of functioning orderly is to maintain the delicate balance between the two. The country cannot function without two of the pillars its people trust the most. Matthew of Justice ruled in the case of *State of U.P. v. Raj Narain*<sup>5</sup>, "the people of this country have a right to know every public act. The right to know comes from the concept of freedom of speech."

## **CHAPTER II**

### **DEATH OF SUSHANT SINGH RAJPUT AND ITS IMPACT**

That the situation is such a mess has its roots in the way things started. While reporting a case of accidental death, the Mumbai Police ruled it a suicide. Anil Deshmukh, the Maharashtra home minister, went on record saying that Sushant Singh Rajput had killed himself because he was depressed.

The death became a mental health problem until the same police began well-publicized questioning one after the other of big Bollywood figures. That gave credence to the allegations that Sushant died because of the industry's biggest studios and superstars' professional boycott.

The crime scene and contradicting statements about the condition in which his body was discovered did the rest. A police video from the incident scene had an officer saying that if the video gets leaked, our investigation will be spoiled. There is still a lot of uncertainty about what was recovered from his room. The unexplained injuries and claims of a broken leg added fuel to the theory of murder. That the flat was cleared out days later led to claims that the 'crime scene' was compromised.

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<sup>4</sup> RAJENDRA SAIL V. MADHYA PRADESH HIGH COURT BAR ASSOCIATION AND OTHERS, CA NOS. 398-399 OF 2001

<sup>5</sup> STATE OF U.P. V. RAJ NARAIN, CRIMINAL APPEAL NO. 891-892 OF 2002 WITH CRIMINAL APPEAL NO. 1811-1812 OF 2009

The presence and absence of fingerprint collection on the things he last used the door fingerprints and other things in the room came under the scanner as well. A simple suicide case, an accidental death, has become a murder mystery and a mess that can only be cleaned up by the Mumbai Police.<sup>6</sup>

## **A TIMELINE OF EVENTS**

Jun 14: Rajput, 34, found hanging from the ceiling of his apartment in suburban Bandra in Mumbai. Mumbai police start inquest proceedings under CrPC to ascertain the cause of unnatural death.

Jun 18: Rajput's purported girlfriend and actress Rhea Chakraborty records her statement before Mumbai Police.

Jul 6: Filmmaker Sanjay Leela Bhansali records statement in the case.

Jul 18: Filmmaker and Yash Raj Films (YRF) chairman Aditya Chopra records his statement with Mumbai Police.

Jul 25: Rajput's father K K Singh lodges an FIR in Patna for several offences including abetment of suicide against Rhea and her family members.

Jul 27: Mumbai Police records filmmaker Mahesh Bhatt's statement.

Jul 29: Rhea moves SC seeking transfer of the FIR in from Patna to Mumbai.

Jul 31: ED says it has filed a money laundering case in the matter.<sup>7</sup>

Aug 4: Bihar chief minister Nitish Kumar says the state government has recommended CBI investigation in the matter. Mumbai Police Commissioner says 54 persons in all have recorded their statements in the case.

Aug 6: CBI says it has lodged an FIR in the matter.

Aug 7: Centre moves SC seeking to be made a party in Rhea's plea.

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<sup>6</sup> <https://scroll.in/article/973171/sudarshan-news-and-sushant-singh-cases-put-spotlight-on-powers-of-courts-to-restrain-media-coverage>

Aug 8: Rajput's father K K Singh moves SC, opposing Rhea's plea.

Aug 10: Rhea moves fresh plea before SC alleging media trial.

Aug 11: Maharashtra govt tells SC that Bihar Police lacks jurisdiction. SC reserves judgement on Rhea's plea.

Aug 19: SC upholds transfer of the Patna FIR to the CBI in the case<sup>8</sup>

Indian democracy is marked by a paradox: it is an arena of conflicting demands and attractions of various social groups that, because of their caste, religion and gender identities, are marginalized. The media, as a critical public sphere, has represented such asymmetries in the processes of democratization and has also been an avenue for meaningful civic participation.

A particular type of rationality that determines their goals and the means to achieve them has been allowed, controlled and justified by the governability of media practices. The numerous media trials on both news networks and social media that have gained undue control over communications in the public domain are prominent examples. They also brought up wider normative concerns regarding media tabloidization. Such neo-liberal media practices reproduce subjects according to market forces' needs and create social conditions that legitimize as normal such skewed representations. Emotional excitement or delirium causes people to be more and more apathetic to the collective consciousness. Duties are no longer accepted as *carte blanche* and moral laws no longer appear to be binding.<sup>9</sup>

The suspected suicide of Sushant Singh Rajput, a talented young actor, stirred up a hornet's nest for Bollywood. Despite the matter being part of an investigation, the continuous dramatic fights on TV speculating about the actor's death have framed his partner Rhea Chakraborty as a "conniving murderer". The "unaccountable power" of both conventional and new media giants represents the ugliness of our society's unequal power ties. A hidden subtext of the Twitterati wars is the essentialist construction of subjectivities including virtuous womanhood, prevailing concepts of femininity and masculinity and constant slandering. Rhea Chakraborty has been accused by Trolls of being a "gold digger" or Bengali black wizard, depriving the pair of their agency of taking decisions based on a hetero-normative premarital relationship in a joint household. The privateness of their relationship is now more suspicious in the public eye because marriage has not been solemnized and there is noticeable antagonism between the two families. The press not only fed on this turpitude, but also

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<sup>8</sup> <https://www.indiatoday.in/sushant-singh-rajput>

<sup>9</sup> Thomas I. Emerson, Right to privacy and freedom of press 337, Yale Law School legal scholarship repository, 1979.

launched a hate campaign before Chakraborty was arrested on substance addiction charges, not murder. Images of camerapersons pouncing on Chakraborty inappropriately while on their way to NCB expose a ruthless misogynist media apologetically invading her private room.

A moral outrage in the population has been generated by the constant dose of prime-time participation by news channel anchors in these media trials. The hyper-focus on the deconstruction of reality is detrimental, patriarchal and based on political benefit. Is a coercion-free deliberation space possible? It has taken the debate on freedom of speech versus free trial to the fore. The suicide of rape-accused activist Khurshid Anwar in 2013 is testament to the media's targeted vilification campaign without enabling the legislation to be properly processed. I could offer several more examples of lynching and perversion in the media that have caused victims to have mental health problems and prejudice.<sup>10</sup>

At this juncture, it is important to analyze how the judiciary has restored constitutional confidence and the spirit of the rule of law in India's free-trial standards debate.

The Supreme Court dealt extensively with freedom of the press in *Express Newspapers vs. Union of India* and claimed that it cannot be unbridled. It is subject to fair limitations, as other freedoms granted by the Constitution. Media experiments need to be considered in the sense of Articles 19(1)(a) and 19(1)(2), read in accordance with Article 21. The Study of the Law Commission on 'Trial by Media: Free Speech and Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)' laid down the contours for a balance of interests between on the one hand, freedom of expression and freedom of expression and on the other hand, excessive interference with the administration of justice. A fair trial can be circumvented by the right of the media to express itself.<sup>11</sup>

Similarly, the Court pointed out that the presumption of innocence of an accused is a legitimate presumption in *Inspector Anil Kumar v. M/S I Sky B and Ors* and *Anukul Chandra Pradhan v. Union of India* and should not be annihilated through the media trial process while the investigation is pending. The protection accorded to an accused under Article 21 of the Constitution will be affected by any media trial.

*Nemo debet esse iudex in propria causa* (the theory of bias) and *Audi alterem partem* (to listen to the other side) are two universal concepts of natural justice. In *Zahira Habibullah v State of Gujarat*<sup>12</sup>, the

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<sup>10</sup> <http://www.civilservicetimes.co.in/editorial-/current-national-issues/416-trial-by-media-looking-beyond-the-pale-of-legality-.html>

<sup>11</sup> [http://www.supremecourtcases.com/index2.php?option=com\\_content&itemid=1&do\\_pdf=1&id=6752](http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=6752)

<sup>12</sup> *ZAHIRA HABIBULLAH V STATE OF GUJARAT, CRIMINAL APPEAL NO. 446-449 OF 2004*



Court described a fair trial in no uncertain terms: a trial before an impartial judge, a fair prosecutor and an environment of judicial calm are nominal procedural requirements. For or against the defendant, the witnesses or the cause that is being investigated, there should be no room for bias or discrimination. Premature decisions in a media trial of guilt or innocence would be the rejection of a free and fair trial. Any intrusion that has an effect on the sentencing process in the legal process is unjust. The prospect of violation of the accused's right to privacy would also pose a threat to justice.

What should the media look like in the re-imagining of the modern India? Robust public participation by responsible and sensitive media practices should not participate in malicious campaigns against dissenters, confidence deficit and deviance should be substituted, and empathy should be the central principle of media independence that would aim to uphold democratic unity.<sup>13</sup>



### **CHAPTER III** **IMPACT OF INVESTIGATIVE JOURNALISM**

#### **1. MEDIA TRIALS vs. FREEDOM OF SPEECH AND EXPRESSION**

In the formation of public opinion on social, political and economic matters, freedom of speech plays a crucial role. Similarly, people in power should be able to keep people aware about their policies and programmes, because freedom of speech can be said to be the mother of all other freedoms.

Venkataramiah, J. of the Supreme Court of India stated, keeping this opinion in mind in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>14</sup>:

“freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

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<sup>13</sup> "Indian media: how free is it really?". *South China Morning Post*. 11 September 2016. Retrieved 3 October 2020.

<sup>14</sup> *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, Writ Petition No. 54 Of 1988

The Supreme Court's assertion above indicates that freedom of the press is important to the proper functioning of the democratic process. Democracy means government by the people, by the people and for the people; it is evident that every person must be entitled to participate in the democratic process and that free and general discussion of public matters is absolutely necessary in order to allow him to exercise his right to make a choice intelligently. This explains the constitutional viewpoint of the freedom of press in India.

The Supreme Court affirmed in *Printers (Mysore) Ltd. v. CTO*<sup>15</sup> that while press freedom is not explicitly guaranteed as a constitutional right, it is implicit in freedom of speech and expression. In all democratic countries, freedom of the press has always been a cherished right and the press has been rightly defined as the fourth chamber of democracy.

It has therefore received generous support from all those who believe in the free flow of information and the participation of the citizens in the administration; it is the primary duty of all national courts, according to the constitutional mandate, to uphold that freedom and to annul all laws or administrative acts which interfere with that freedom.

The Supreme Court of India has held in *R. Rajagopal v. State of T.N*<sup>16</sup> that press freedom applies to an uninhabited discussion on the role of public figures in public issues and events. However as far as their private lives are concerned, in terms of the democratic way of life laid down in the Constitution, a careful balance of press freedom as well as the right to privacy and retained defamation must be carried out.

It is therefore clear, in the light of the observations made by the Supreme Court in the various judgments and the opinions expressed by the various jurists, that the freedom of the press derives from the freedom of speech which Article 19(1)(a) guarantees to all people. The press has no greater standing than any other person and does not assert any right as such (unless expressly granted by law), as distinct from that of any other citizen. No special restrictions which cannot be placed on any citizen of the country may be imposed on the press.

## **2. MEDIA TRIAL vs. FAIR TRIAL**

A "problem" has been created by media trials because it requires a tug of war between two competing

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<sup>15</sup> *PRINTERS (MYSORE) LTD. V. CTO*, CIVIL APPEAL NO. 1550 OF 1985

<sup>16</sup> *R. RAJAGOPAL AND ANOTHER V. STATE OF TAMIL NADU AND OTHERS*, WRIT PETITION (C) NO. 422 OF 1994

values, free press and free trial, both of which are of crucial concern to the public. The freedom of the press derives from the right of the people to be active in the issues of the day that concern them in a democracy. For investigative and campaign journalism, this is the reason.

At the same time, the "Right to Fair Trial" is recognised as a fundamental tenet of justice in India, i.e. a trial uninfluenced by international influences. The provisions aimed at safeguarding this right are found in the 1971 Contempt of Courts Act and in Articles 129 and 215 of the Constitution of India (Contempt of Jurisdiction-Power of the Supreme Court and of the High Court to Punish for Contempt of itself, respectively). Restrictions that are placed on the discussion or publishing of matters relating to the merits of a case pending before the Court are of special interest to the media. Therefore, if a journalist publishes anything that may prejudice a 'fair trial' or anything that impairs the impartiality of the Court to decide a case on its merits, whether the proceedings before the Court are a criminal or civil proceeding, a journalist may be responsible for contempt of the Court.

Publications recognised as prejudicial to a suspect or accused, such as the character of the accused, publication of confessions, publications commenting on or reflecting on the merits of the case, photographs, police activities, imputation of innocence, creation of an atmosphere of prejudice, criticism of witnesses, the Indian criminal justice system, exceed the right of the media. This includes several other rights including the right to be presumed innocent until proven guilty, the guilt to be proven beyond reasonable doubt, and the law is governed by senses and not by emotions, the right not to be forced to be a witness against oneself, the right to a public trial, the right to legal representation, the right to speedy trial, the right to be present during trial, and the right to be present during trial.

In *Zahira Habibullah Sheikh v. Gujarat State*<sup>17</sup>, the Supreme Court clarified that a "fair trial would obviously imply a trial before an impartial judge, a fair prosecutor and a calm judicial atmosphere." A fair trial means a trial in which bias or prejudice is removed for or against the accused, the witnesses, or the cause being prosecuted.

Every person's right to a fair trial is an absolute right within the geographical limits of India, according to Articles 14 and 20, 21 and 22 of the Constitution. Needless to mention, the right to a fair trial is more essential as it is an absolute right to be read under Article 14, which flows from Article 21 of the Constitution. In Article 19 of the Constitution, the right to freedom of speech and expression is

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<sup>17</sup> ZAHIRA HABIBULLAH V STATE OF GUJARAT, CRIMINAL APPEAL NO. 446-449 OF 2004

included. The fundamental right to freedom of speech and expression is guaranteed by Article 19(1) (a) of the Constitution of India. In accordance with Article 19(2), this right can be restricted by law only in the “interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”

### 3. **MEDIA TRIAL vs. RIGHT TO BE REPRESENTED**

Through media trials, we have also begun to build pressure on the attorneys not to take up accused cases, attempting to compel these accused to go to trial without any defence. Isn't it in contradiction to the ideals of natural justice? Each person has the right to be represented and bring his point before the adjudicating tribunal by a lawyer of his choice and no one has the right to prevent him from doing so. For example, when prominent lawyer Ram Jethmalani tried to defend Manu Sharma, a prime defendant in a murder case, he was publicly ridiculed. The decision to represent Sharma was called an effort to "defend the indefensible" by a senior editor of the television news channel CNN-IBN<sup>18</sup>. This was only one instance of a campaign instigated by the media against the accused. As we all knew, we had one of the country's finest lawyers, Gopal Subramaniam, appearing for the state in that case, and the case of Manu was handed over to some mediocre lawyer. The right to legal counsel, a vital aspect of the right to fair trial, is explicitly infringed by the media presumption of guilt and can even shame attorneys into declining to defend accused citizens. Apart from the perpetrators and convicted, even victims and witnesses suffer from undue coverage and invasion of their rights to privacy. The police are portrayed by the media in bad light and their morale suffers too. The day after the crime report was released, the media said 'The police have no idea.' Then whatever the media gossips about the line of investigation by the official agencies, it offers enough attention with regard to the data that the person who has actually committed the crime will move away to safer locations. Day after day, the pressure on the police from the media builds up and reaches a point where the police feel forced to say something or another in public to defend their image. Often when police come out with a report under such pressure that they have nabbed a suspect and that he has confessed, the 'Breaking News' items begin and few in the media seem to know that in a criminal trial, confession to police is not admissible under the law. Once both the police and the media report the statement, the suspect's future is finished as he withdraws from the muddle of confession. Witness security is a severe casualty then. This leads to the issue of whether hostile witness testimony is admissible and

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<sup>18</sup> <http://presscouncil.nic.in/OldWebsite/NORMS-2010.pdf>

whether the legislation should be changed to prohibit witnesses from modifying their statements. Again if the photos of the suspect are seen in the media, during 'identification parades' carried out under the Code of Criminal Procedure for the identification of the accused, issues will occur. The subconscious influence on the judge as one of the key media tribunal' claims is that the judges presiding over a specific case are prejudiced. As there is always a risk that judges may be swayed by the swirling air of statements made about a specific dispute. The media portrays the case to the public in such a way that if a judge passes an injunction against the "media verdict," he or she may seem either unethical or biased to many.

While hearing the Public Interest Litigations (PIL) against media trial in the case of actor Sushant Singh Rajput today, Bombay High Court said, "We urge and expect the media to exercise restraint in reporting the death investigation, which would not in any way hamper the investigation." The court also asked the Central Bureau of Investigation (CBI) to make it clear on its stance on the investigation. There were a few PILs heard by Justice AA Sayed's division bench and the High Court's Justice SP Tavade.

"Senior lawyer Milind Sathe appearing for Mumbai Police former DG rank officers such as MN Singh, PS Pasricha, K Subramanyam, DN Jadhav, D Shivanandan, Sanjeev Dayal, SC Mathur and KP Raghuvanshi said The investigation is undermined by journalists. Who are the journalists to provide the inquiry with guidance? In the general public's view, they generate an impression. Their reporting is entirely defamatory and imprecise.<sup>19</sup>

Sathe stressed that about the maligning of the image of Mumbai Police" is of concern to them. In addition, "media has been questioning every possible witness. They are conducting a parallel investigation. Divulging of important evidence before the investigating agencies can question them."<sup>20</sup>

Sathe claims that the order of the Super Court to move the case to CBI did not in any way undermine the Mumbai Police investigation.

Additional Solicitor General Anil Singh argued that the hearing should be adjourned because he had

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<sup>19</sup> <https://www.indiatoday.in/movies/celebrities/story/sushant-singh-rajput-death-case-cbi-to-tell-bombay-hc-if-media-trials-are-hampering-probe-1718254-2020-09-03>

<sup>20</sup> <https://www.indiatoday.in/movies/celebrities/story/sushant-singh-rajput-death-case-cbi-to-tell-bombay-hc-if-media-trials-are-hampering-probe-1718254-2020-09-03>

not gone through the petitions. "nothing will happen in a day" what is so urgent in this case? In this case, what is so urgent?

"Advocate Devadutt Kamat, representing another petitioner, said, "All we are saying is that the news channels implement your own codes. All we are praying is that there should be a suspension of reporting of this case until the investigation is done." Kamat added, "This country will only survive if we have a free media. But this involvement in this investigation by the media should cease. The investigator, the prosecutor and the judge have become the media. There is a breach of the collection of sacrosanct rules. Journalists are witnesses hounding who are being interviewed by the CBI. Journalists question them the moment they come out, 'tell us what you told the CBI.' Is this how to do reporting? "

"Justice AA Sayed and Justice SP Tavade continued to ask if notices informing them about the hearing were served on the channels? Justices expressed surprise that none of the TV news channels appeared before the court. Singh also said This is unusual that none of the channels have appeared on such a significant topic. No notice was served to CBI too The petitioners' lawyers said that they have served notices, adding, "The notices were sent on the email purchased from the news channels' website." Kamat continued, "What directs the media is not the search for reality. "But it is the TRP and the commercial gains." He added that against this form of reporting, the press council itself has articulated and opined.

Justice AA Sayed and Justice SP Tavade have asked the petitioners, "If you say the investigation is being hampered, is the CBI party to this petition?" "The petitioners responded in the affirmative to which Singh replied, "No notice was served by the CBI either."

#### **CHAPTER IV**

#### **CONCLUSION**

With a few outliers here and there, the narrative above makes it clear that the media had a greater detrimental effect than a beneficial one. The courts must appropriately control the media. The media cannot be allowed unrestricted access to court hearings since they are not like a sporting event. The Law Commission has also produced a study titled "Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure" (Amendments to the Contempt of Court Act, 1971) [Report number 200

prepared in 2006].

Everyone manipulates the media to further their own agendas or hurt those of their rivals. The issue lies not in exposing the shortcomings of a poor police investigation or improper execution of the responsibilities assigned to state workers by the media, but rather in raising eyebrows when the media oversteps its bounds and does something it is not supposed to do. Whether it draws attention to the problems with subjudice in public, the integrity of legal processes, and the suspects' and accused's "right to life with dignity" are all at risk. The media trial has now progressed to the media's verdict and sentence, which is clearly an unlawful use of freedom and a careful drawing of legal limits.

The aforementioned narrative makes it evident that the media had more of a detrimental than a favorable influence. The courts must appropriately regulate the media. Since legal proceedings are not like sporting events, the media shouldn't be allowed unrestricted access. Any institution, whether it be the legislative, executive branch, courts, or bureaucracy, is susceptible to abuse if it goes beyond its bounds of legitimacy and functions. In addition to the groundbreaking sting operations, the media trial is a commendable endeavor since it closely monitors police administration, executive investigations, and operations. But there needs to be some kind of regulation or acceptable self-restriction over its domain, and a fair trial needs to be prioritized.

The media should recognise the fact that whatever they publish has a major impact on the viewer. It is therefore the moral duty of the media to show the truth, and at the right time, too. The most effective way to control the media is to use the court's jurisdiction of contempt to prosecute those who breach the fundamental code of conduct.

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