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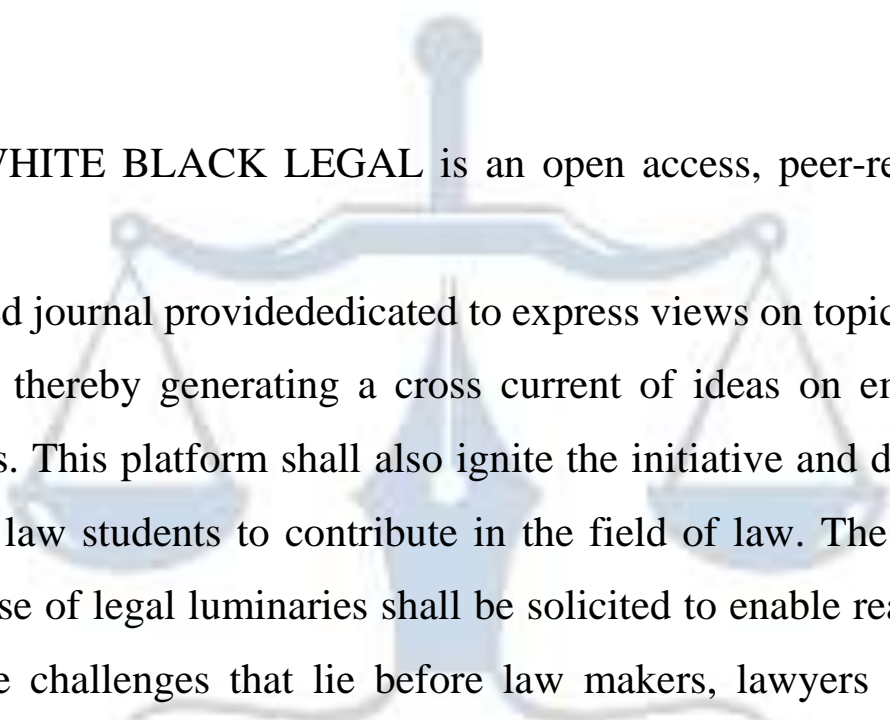


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## ***ABOUT US***



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 TRIAL A MENACE AGAINST FAIR TRIAL<sup>1</sup>

AUTHORED BY - DR G.S RAJPUROHIT & SUMITA

## Abstract

*Media is one of the four pillars of a democracy, being the eyes and ears of general public it plays a vital role in creating and moulding the opinion of public. The freedom of media facilitates the right of information of the public, as in a democracy, people must know, and participate in the affairs of their country. Free and vigilant press is indispensable for the functioning of democracy, but this freedom comes with reasonable restrictions under Article 19(2) and majority of times media coverage is engrossed in the controversy of violating such restrictions. Media intrusion is an ethical dilemma for the developing nations these days. It has become a trend for media to investigate the facts on its own. 'Media trial' is a term widely used to describe the impact of newspaper and television coverage on a person's reputation by creating a pervasive perception of guilt or innocence before a verdict of court of law. This has lead to an antagonistic relationship between fair trial and free media. To understand the antagonism of fair trial and free media one has to reflect on the evolutions of court and media in its present scenario. Judiciary and media share a common bond and play a complimentary role to each other; man is the center of their universe. Both are engaged in the same task; to discover the truth, to uphold the democratic values and to bring justice and common man closer. Media intervention in sub judice cases has become very common these days. This intervention sometimes permeates the walls of justice delivery system and act as pressure on the judges. Media houses and social media platform users transform into public court and judges, start investigation and pass verdicts. This paper attempts to discuss the foul play of media trial against fair trial.*

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<sup>1</sup> Dr. G.S Rajpurohit (Associate Professor, University of Rajasthan).  
Sumita (Phd Scholar, University of Rajasthan).



## Introduction

Media plays many roles in society and one of such vital roles is to mold the opinion of the people, it can change the whole viewpoint through which people perceive various events. However, today high decibel journalism is in vogue, it doesn't matter whether the arguments made during such debates make sense or create a picture in front of the general public which might not be based on facts, only TRP matters.

'Media trial' this phrase became vogue in the late 20th century and early 21st century to describe the impact of newspaper and television coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict given by court of law. Lately, the media has used its freedom to undermine the judiciary by crossing the ethical line. As far as a criminal trial is concerned media reporting has a more negative influence rather than a positive effect. Media while reporting the news about any case, to sensationalize the news portrays the accused as he is already a criminal and continues to play the name game by calling them crooks, cheats, frauds, money-hungry wolves, and other such terms based on the bare facts, thus in a way damaging the dignity and identity of an accused person even before the actual judicial proceedings begin.

Hon'ble Supreme Court defined media trials as *"the effect of television and newspaper reporting on a person's image by generating a common presumption of guilt, irrespective of any decision in a court of law."*<sup>2</sup> Media by acting as a public court analyzes facts and circumstances according to its presumptions without paying heed to the law of the country and whenever questions are raised over ethics, media dodges them with the shield of free speech, claiming its right under Article 19(1) of the Constitution<sup>3</sup>, but, it fails to recognize the fundamental rights of the accused. Similarly, while acting as Janta Adalat it fails to recognize the crucial gap between an accused and a convict, thereby ignoring the golden principles of criminal law jurisprudence i.e. *'presumption of innocence until proven guilty'* and *'proof beyond reasonable doubt'*. Media is endowed with the duty to report facts and truth important for public knowledge but it has rather turned into a questionable exercise that is continuously infringing the fundamental rights of the accused provided under Article 19, 20, 21 of the Constitution of India. Thus, creating an alarming need to pull the reigns of this unruly horse

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<sup>2</sup> Sanatan Deshpande, Priyank Jagawanshi, *A critical analysis of media trial and its effect on Indian judiciary*, 6 (1), IJRAR (2019)

<sup>3</sup> India Consti. art 19 cl 1

named media. In this article, an attempt has been made to discuss an ever-growing concern regarding how media is using its reach to trigger opinions and generating verdicts based on only a few facts and half-baked presumptions and further massacring the reputation and privacy of an alleged accused.

## Media Trial

The impact of print media and television coverage on a case through an attempt by the media to hold the accused guilty even before the trial begins is known as 'media trial'.<sup>4</sup> According to Ray Surette, media trial can be classified into three types<sup>5</sup>-

1. **Sinful Rich Type** – In this type of trial mostly socially prominent defendants are involved in the case regarding some bizarre or sex-related crimes. If the person is named big enough, any small act becomes newsworthy.
2. **Evil stranger psychotic killer** – Here, the media trial focuses on peculiar offenses especially murders in which the defendant is portrayed as mad, someone has a predatory tendency.
3. **Abuse of power trial.** - In this type the defendant occupies a position of trust, prestige, or authority, the general rule is higher the rank, the more the media is interested.

The problem with this kind of reporting or sharing an opinion on social media platforms is the add-on sensationalism. This sensationalism and the urge to increase the TRP or followers by using such news leads to the society forming opinions based on biased notions rather than relying on the judiciary.

Hence, the freedom provided to the press, media, and to some extent to the citizens is co-related to the special duty that it should not infringe on the fundamental rights of some other person. The fact that media and press have time and again failed to realize this duty has led to the Supreme Court observing against such manner of reporting time and again. It was observed that the trial by press, electronic media, or by public agitation expressed through different social media platforms are anti-thesis to the rule of law as such trials can lead to miscarriage of justice and somehow creates even more pressure on judges<sup>6</sup>.

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<sup>4</sup> SM Aamir Ali, Mohd Imran, *Media Trial: A Hindrance in Dispensation of Justice*, 2(2) JLSR (2016)

<sup>5</sup> Ray Surette, *the Media, the Public, and Criminal Justice Policy*, 2 JIJIS 39 (2003)

<sup>6</sup> *State of Maharashtra v. Rajendra Jawanmal Gandhi*, 1997 (8) SCC 386.

On numerous occasions, the Supreme court has expressed its discontent over such investigative journalism, publicity, speculation, and conjectures in sub judice matters which usurp the judiciary and deciding on the culpability of an accused further going on to treat such person as a convict and violate the Press Council and Norms of Journalistic Conduct for Trial by Media<sup>7</sup>. One's right to freedom of speech and expression should be exercised in a manner that does not interfere with the impartial administration of justice in any manner.<sup>8</sup>

*Journalism and ethics today stand far apart, while the journalists are distinctive facilitators for the democratic process to function without hindrance the media has to follow the virtues of accuracy, honesty, objectivity, truth, fairness, balanced reporting, and respect the autonomy of ordinary people<sup>9</sup>. Unfortunately, these days the practical consideration, sensationalism, promotion, meeting growth targets are factors that drive the journalists to print and publish spicy stories and information rather than what is in the public interest<sup>10</sup>.*

### **Laws incidental to the power of press and media-**

**The Universal Declaration of Human Rights:** Article 19 grants every individual freedom of speech and expression, to hold an opinion without interference, and receive and impart information through the media.<sup>11</sup>

**The International Covenant on Civil and Political Rights:** Article 19 provides everyone with the right to hold opinions without interference, have the right to freedom of speech and expression, freedom to seek, impart information.<sup>12</sup>

**The Constitution of India:** Article 19 (1) (a) also provides for the freedom of speech and expression and recognizes the right of the press to publish and express information important for the public at large. However, clause 2 of this same article provides for the imposition of reasonable restrictions in the interest of-

- *Sovereignty and integrity of India*
- *Security of State*
- *Friendly relations with foreign states*

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<sup>7</sup> The Press Council and Norms of Journalistic Conduct for Trial by Media, Norm 45,

<sup>8</sup> *Sidhartha Vashisht v State (NCT of Delhi)*, 2010 (6) SCC1

<sup>9</sup> *Mother Dairy Foods & Processing Ltd v. Zee Telefilms*, IA 8185/2003 Suit No. 1543/2003 dated 24.1.2005

<sup>10</sup> Mathew Kieran, *Media Ethics: A Philosophical Approach*, Westport, Conn: Praeger Publishers, 1997

<sup>11</sup> Article 19 of *The Universal Declaration of Human Rights*, 10 December 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>12</sup> International Covenant on Civil and Political Rights, Part III, 16 December 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

- *Public order, decency, or morality*
- *In relation to contempt of court*
- *Defamation*
- *Incitement of offense*<sup>13</sup>

**The Contempt of Courts Act, 1971**<sup>14</sup>- The restrictions under Article 19(2) do not provide for interference with the administration of justice, but interference in the administration of justice is specifically referred to as contempt in the definition of 'criminal contempt' in Section 2 (c), however, it includes only those publications which interferes or obstructs the course of justice in relation with any civil or criminal proceeding, which is 'pending', only then it constitutes contempt of court under the Act. It overlooks publications by media at the pre-trial stage, which can affect the rights of the accused for a fair trial.<sup>15</sup>

In *Harijai Singh v Vijay Kumar*, Supreme Court held that the freedom of the press too can be restrained on the grounds mentioned in [Article 19\(2\)](#) and Article 21 of the Constitution. Press, media, and the other social media platforms which are being used as a tool to share opinions and individual judgments on various cases and incidents are equally bound by the restrictions as is any other citizen of India. No editor has the right to assume the role of an investigator or try to prejudice the court against any person<sup>16</sup>.

### **Media trial and interference with the justice system**

Due to such high-powered salesmanship of ideas, the proactive stance of the media is beginning to intervene with the administration of justice. Not just the accused but the victims and witnesses also become subject to the interference of media platforms. In *State (N.C.T. of Delhi) v. Navjot Sandhu*<sup>17</sup>, the Court deprecated the practice of exposing the accused persons to public glare through TV, and in the case where Test Identification Parade<sup>18</sup> or the accused person being identified by witnesses arises; the case of the prosecution is vulnerable to be attacked on the ground of exposure of the accused.

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<sup>13</sup> India Consti. art 19 cl 2

<sup>14</sup> The Contempt of Courts Act, 1971 Act No. 70, Acts of Parliament 1971(India)

<sup>15</sup> Nitesh Tripathi, *Media Trial: An Impediment in Fair Trial*, 4(10) JCIL

<sup>16</sup> *Harijai Singh v Vijay Kumar* 1996 6 SCC 466

<sup>17</sup> *State (N.C.T. of Delhi) v. Navjot Sandhu* AIR 2005 SC 3820

<sup>18</sup> The Indian Evidence Act, 1872, S.9, No. 1 Act of Parliament, 1872 (India).

The impact of media trial is not just restricted to infringement of accused, it also intermeddles with the rights and lives of victims, for instance, the habit of name-giving to rape victims, media does not stop here, it goes on to visit and disclose details of places where the victim used to live, school or college, area of residence, the nearby area, etc, which ultimately makes the identity of victim obvious, thereby clearly infringing the provision of Indian Penal Code, which specifically provides for non-disclosure of the identity of the victim of certain offenses.<sup>19</sup>

It is, for this reason, the court under the Criminal Procedure Code has the power to hold the in-camera or closed room<sup>20</sup> proceeding to save the parties from unwanted disclosure, but most of the time the media speculations regarding any case begin even before the case and parties reach courtrooms. The media in its quest for sensationalism does not realize that such exposure is likely to jeopardize the right to a life of dignity of the parties involved in the case. Media on its own has created a plebiscitary democracy, wherein people vote and conduct opinion polls at the cost of the rights of the accused.

The right to a fair trial is the absolute rights of each citizen within India's territorial boundaries vide Article 14<sup>21</sup> and Article 20<sup>22</sup> Article 21<sup>23</sup> of the Constitution. The right to a fair trial is a significant right deriving from Article 21 of the Constitution read with Article 14. In contrast to one's right to freedom of speech and expression, one's life with dignity is given priority.<sup>24</sup>

The Law Commission of India also expressed its concern and discontent over this issue of investigative journalism and media trial in its 200<sup>th</sup> report. The report cited many precedents to bring to light various forms of publications that are prejudicial to the trial of the suspect; such publications include commenting on the previous relationships or acts of the accused, commenting on the character and nature of the person. There have been instances where the judicial proceedings and the merits of the case have been questioned and unnecessarily linked to political influences. The journalists have the liberty to report the relevant information of public interest but publicly questioning the assertions of the eyewitnesses and even premature publication and discussions of the evidence involved in the case are all instances that

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<sup>19</sup> The Indian Penal Code, 1860 S. 228A, No. 45, Act of Parliament, 1860 (India)

<sup>20</sup> The Criminal Procedure Code, 1973, S. 327 No.2, Act of Parliament, 1974 (India)

<sup>21</sup> Equality before Law

<sup>22</sup> Protection in respect of conviction of offenses.

<sup>23</sup> Protection of life and personal Liberty

<sup>24</sup> Saibal Kumar Gupta And Others vs. B. K. Sen And Another 1961 AIR 633

substantially interfere with the impartial administration of justice<sup>25</sup>. The report further provided that such kind of publications which tend to interfere with the sub judice cases are in a way contempt of the court and creates *hindrance or interference in the administration of justice concerning a person facing trial. The prejudicial publication affecting the public which in turn affects the accused leading to a denial of a fair trial.*<sup>26</sup>

### **Impact of Media Trials in the light of new-age platforms**

In the recent past, the media trial has expanded its horizons, verdict passing has taken to another platform i.e. social media sites on which after every incident or crime everyone takes upsides or expresses their opinion by trolling the alleged accused without even waiting for the court of law to hear and pronounce the judgment. The aptest example of this kind of tragedy is the case of Sarvjeet Singh, in 2015 he was falsely accused by Jasleen Kaur for harassing her where she posted a picture of him on Face book which went viral and led to his arrest after the inquiry came to light that Sarvjeet Singh was innocent but due to the media coverage and hype created by media, the media labeled him as a harasser and Sarvjeet Singh faced public humiliation and was sacked from his job<sup>27</sup>. This case depicts how media can ruin the life of an innocent through its coverage without verifying the true events.

Another recent case, where the media trial and speculations were seen as a threat to the fair trial was the toolkit case which was shared by the climate activist. In this case, the Delhi High court specifically ordered the media houses should ensure that they cover the case based on verified and authentic sources and the editors must exercise proper editorial control so the accused's rights are not violated.<sup>28</sup> Be it the case of Sushant Singh Rajput's death or any other case social media platform users never understand that their personal opinions might play foul.

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<sup>25</sup> Law Commission Of India 200 The Report, Trial by Media Free Speech and Fair Trial Under Criminal Procedure Code, 1973 <https://lawcommissionofindia.nic.in/reports/rep200.pdf>

<sup>26</sup> Nimisha Jha, *Constitutionality of Media Trials in India: A Detailed Analysis*, (last visited April 24, 2021) [https://www.lawctopus.com/academike/media-trials-india/#\\_ftnref43](https://www.lawctopus.com/academike/media-trials-india/#_ftnref43)

<sup>27</sup> Ananya Bhardwaj, *Man labeled a pervert and Delhi ka darinda acquitted in molestation case after 4 years*, (last visited, April 24, 2021) <https://theprint.in/india/man-labelled-pervert-delhi-ka-darinda-acquitted-molestation-case-after-4-years/311456/>

<sup>28</sup> Sofi Ahsan, Anand Mohan J, *Disha Ravi case: Police must not prejudice probe, media should exercise restraint, says HC*, (last visited April 28, 2021) <https://indianexpress.com/article/india/disha-ravi-case-media-high-court-7196329/>

## Conclusion

The importance of freedom of expression in a true democracy is undeniable. No democracy can work without an effective platform to express opinions, but that does not give anyone the power to infringe the rights of any individual. Media needs play the role of a facilitator rather than tilting the scales in favor of either party. Heinous crimes must be condemned and the media would be justified in calling for the perpetrators to be punished by the law. But, the media cannot assume the function of the judiciary and deviate from objective and unbiased reporting.

Although, the 200<sup>th</sup> Law Commission report discussed this menace, but it is the need of the hour to lay the foundation of the jurisprudence and laws governing stringently the media trials. The judiciary and media are institutions inhabiting separate spheres and their functions do not overlap. One cannot and must not use the other for the discharge of its functions. The media should only engage in acts of journalism and must not act as a special agency for the court. Interference with the administration of justice due to the prejudicial nature of certain media coverage in the name of freedom of press cannot be allowed.



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