
THE INFLUENCE OF MEDIA TRIALS ON THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Media is an important part of a democratic society, as it informs the citizens, fosters transparency and serves as a watchdog over the public institutions. The impact of the media on public opinion has grown tremendously in today's era of expanding television news channels, digital media and social networking. In recent years, however, the term 'media trial' has come to describe the way in which media is used to discuss and analyze criminal cases and may lead to the creation of public sentiments on the guilt or innocence of the accused even before a judgement is passed.

The present research paper deals with the effect of media trial on criminal justice in India. It examines the impact of excessive media involvement in an ongoing investigation and court proceedings on the presumption of innocence, judicial impartiality and the right to privacy of persons who are part of a case. The paper also examines the tension between Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression and Article 21 of the Constitution, which guarantees a fair trial.

Keywords: Media trial, Criminal Justice, Public Opinion, Presumption of innocence, Fair Trial, Press Freedom.

Introduction

The media is considered to be the “forth pillar of democracy” because it plays a key role in fostering transparency and accountability in the public's view. It is an important tool for communicating between the government and the people in a democratic society, providing information and enabling public debate. The media has been a significant player in exposing corruption, acting as a watchdog on social injustice and raising issues of public importance over the years.

Media have grown in reach and influence with the advent of 24-hour television news, digital journalism and social media. These developments have led to an increased access to information, but at the same time to a fierce competition among media organisations. Reporting has sometimes been sensationalised in the quest for highlighting and gaining public interest, especially in high profile criminal cases. This has led to the creation of what can be described as a “media trial” in which the media discusses, investigates and constructs narratives about a case before it is finally decided by the judiciary.

The rise in the frequency of media trials has raised serious questions about the effect of media trials on the administration of justice. Over-information of a case can mislead the public, have an impact on the reputation of the accused, and can even jeopardize basic rights like the presumption of innocence and the right to a fair trial. In the meantime, the issue involves an important constitutional debate about the balance between freedom to press and the right to life and personal liberty, including a fair trial, as enshrined in Article 21 of the Constitution of India.

In this background, the present study looks at the notion of media trial and its implications for the Indian criminal justice system. It aims to examine the implications of the legal and social aspects of media involvement in courts, as well as consider the importance of a balanced approach, where both the rights and interests of the media and the integrity of the justice delivery system are respected.

Theoretical Framework

Media trial can be viewed from different theoretical angles that focus on the influence of media, public opinion and the administration of justice. These views serve as a conceptual

basis for the study of media coverage and public discourse of criminal cases and its effect on the operation of the criminal justice system. The present study is basically based on the Public Sphere Theory, Agenda-Setting Theory, and Social Responsibility Theory to assess the role of media in the current procedure of criminal cases.

1. Public Sphere Theory

According to Jürgen Habermas's Public Sphere Theory, the media is a place where people can meet and talk about public things democratically. Citizens participate in debates about issues that are of public concern via newspapers, television stations and digital channels. Yet in the arena of criminal cases, the media sometimes can turn discussion into premature judgment, creating a perception in the public before judicial proceedings are finished.

2. Agenda-Setting Theory

According to the Agenda-Setting Theory, the media has the power to set the agenda for the public to pay attention to a certain issue. Media coverage for some criminal cases is extensive, drawing public attention to those cases and establishing issues for public attention. As a result, the perception of the public about current investigations and trials could be greatly influenced by media reporting.

3. Social Responsibility Theory

The Social Responsibility Theory focuses on the importance of the press's freedom to be held accountable and responsible in its actions. The media has an important democratic role in conveying information to citizens, but must report accurately, impartially and fairly. In criminal cases, responsible journalism has a special role as it can have negative impacts on the administration of justice if a crime is not reported or is reported favorably.

These theoretical approaches collectively give an understanding of the intricate dynamics between the media and the criminal justice system. They emphasise the democratic value of the role of media in the society as well as the importance of media practices not to affect the fairness, impartiality and integrity of judicial proceedings.

Public Opinion Influence

Public opinion holds a great deal of weight in any democracy in determining the attitudes of

the populace toward crime and justice. In high-profile criminal cases, however, the public's opinion is seldom developed on its own. It is to a great extent influenced and directed by media reports. Before a jury finds its verdict, millions of people make decisions on who is culpable, what punishment is warranted, and whether the justice system is operating reasonably, as a result of news reports, newspapers, and information on social media.

1. How Media Shapes Public Opinion

If the case of a crime is in the media spotlight, citizens are relying on news media, newspapers and social media to a great extent. However media does not simply present facts- it presents facts in a particular way. Reporters' use of words, images, headlines and narratives angles change the perceptions of the audience and of the accused and the crime itself.

This selective presentation of information allows for the formation of opinions in high profile cases that are often one-sided and strong. A steady stream of a single case makes it appear to be the most important problem in the nation. Emotional reporting- through images of victims, dramatic headlines and charged debates- elicits emotional instead of rational audience reactions. So the public has a strong impression of guilt or innocence—often before they have heard all the evidence and facts in court.

2. How public opinion is reflected in society.

When media attention creates a great public opinion, there are a number of visible signs of this opinion in society.

Unrest and demonstrations occur on a regular basis as people rally behind a dominant narrative espoused by media. Social media contributes to this, as hashtags, viral content and online campaigns generate mass movements, transcending geographical limits. These contrary or less confident voices are frequently muted by the dominant opinion and as a result only one opinion becomes accepted as being the dominant one in public discussion.

This general consensus among citizens then manifests itself as direct pressure on institutions. Politicians speak in the public on media stories. Government statements on policy response. Police are under public pressure to act quickly and effectively in their probe. Thus through media there is a public opinion shift from the TV, to the streets, and then to the corridors of government and justice.

3. Impact of Public opinion on the Criminal Justice System

One of the biggest issues that comes with media-driven public opinion is the effect that it has on the criminal justice process. The public is not standing outside the court, it's in there in many capacities.

Public demands for quick arrests and the most serious possible charges put pressure on the prosecution and police. Accused persons' Defense Lawyers are subjected to public hostility, professional consequences and in some instances personal threats from the public. This leaves the accused without effective legal assistance- the essence of a fair trial.

Even though judges are bound to be objective, they are still subject to media influences in their social context. Public expectations can help to drive the speed of the trial and, in extreme cases, the severity of the sentences outcome. It has been long demonstrated that a trial with extensive media coverage creates conditions which make truly impartial adjudications extremely difficult.

In addition, governments react to media- amplified public pressure by enacting changes to the legislation in a hasty manner without thorough deliberation. Such changes at times may be necessary and desirable, but they could also be carried out in a knee-jerk reaction to public sentiment rather than in a measured response to a legal analysis.

4. The Nirbhaya Case

The Nirbhaya case of 2012 is one of the most notable instances in India's history where public opinion was used to directly pressure the criminal justice system.

The demands were taken up by the institution's response.

This is not about what was asked for or what was given- it's about what was expected and what was provided. All major legal and institutional alterations that followed were a direct response to the public pressure that gained momentum when it was picked up by the media, but did not result from independent legal thinking. This is a basic issue about the independence of the judiciary and their governments: are they reacting to evidence and law or to the level of public opinion created and maintained by the media?

The public opinion in the Nirbhaya case was not only a social phenomenon but also an inspiration to the legislative and judicial action. The results were the enactment of pioneering legislation, but also the fragility of the judicial system's standing in the face of public opinion. If the system of justice is adjusted to the amount of public demand, then it risks undermining the basic principles of justice and independence

Presumption of Innocence

The principle of presumption of innocence is one of the basic principles of criminal jurisprudence. It requires the assumption of innocence for anyone accused of a criminal offense, up to the point that a prosecution is able to prove the accused's guilt beyond any reasonable doubt in a competent court of law. This is an important rule of law that protects against the arbitrary actions of governments, hasty verdicts, and public prejudice. But in the modern media world, this idea is not only severely compromised in individual instances of sensationalist criminal reporting, but is also systematically challenged through the consistent tendency to build criminal stories of guilt long before they reach the conclusion of the court proceedings.

1. Legal Foundation

Presumption of innocence is acknowledged in the national and international legal systems. On the international level, Article 11(1) of the Universal Declaration of Human Rights 1948 states that "Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to the law in a public trial. State parties to the International Covenant on Civil and Political Rights also have a duty under article 14(2) to ensure that accused persons are not subjected to prejudicial treatment before conviction.

Under the Indian legal system the presumption of innocence is guaranteed under the Indian Constitution, article 21 which guarantees the right to life and personal liberty. The Supreme Court in India has, over the years, held that the right to a fair trial is an integral part of Article 21, including the presumption of innocence. The Code of Criminal Procedure also organizes the entire trial process in its favor, by putting the burden of proof on the prosecution.

2. Media Coverage as a Threat to Presumption of Innocence

Even though it has strong legal support, the presumption of innocence is often violated in the

cases of major crimes in the media. In today's news media, which is commercial and consumer oriented, the narrative is often of guilt, even before any judge has rendered a verdict. This is called the trial by media, and it's a direct threat to the integrity of the legal process.

Criminal cases use the language, imagery and expert interpretation in a systematic way to create a sense of guilt for the accused. Prime time debates on news channels about the punishment that should be given to people who are not found guilty in a court of law. This is not only in breach of the presumption of innocence but also fosters an atmosphere of hostility that undermines the ability to free everyone of suspicion, and to hold fair and impartial trials.

3. The Aryan Khan Drug Case 2021

The Nirbhaya case has been an example of how the media pressure can quicken the pace of institutional action while the Aryan Khan drug case of 2021 has been a contrasting and equally important example in which the media-created public opinion had once again proved to be mistaken in assuming guilt and the charges were never framed against the accused.

Aryan Khan was arrested by the Narcotics Control Bureau in October 2021 after it raided a cruise ship in Mumbai. His person was not discovered to contain any drugs. He was detained for 26 days and released on bail by the Bombay High Court. He never appeared in the final chargesheet, which was filed in May 2022, indicating no charges had been laid against him.

Indian media has been covering him from the moment of his arrest that essentially amounted to an "innocent until proven guilty" statement. His purported criminal connections were taken as a given during prime time debates. His photos taken in custody were spread far and wide on TV and the internet. Anchors and panelists used words that contained the assumption of guilt, referring to him as part of a drug network where there was no evidence. The fact that the accused is a celebrity also made the coverage sensational and away from the actual allegations.

The Bombay High Court, while granting bail, stated that there was no sufficient material on record to justify against continued detention. When he was not even named in the final chargesheet, it stated that the entire media narrative of his guilt was legally baseless. The hurt done to the reputation, the trauma of custodial imprisonment, and the public humiliation as a result of weeks of prejudicial media coverage, became untreatable by the failure of charges.

4. Effects of undermining the presumption of innocence

A loss of the presumption of innocence due to media attention and public opinion has implications beyond any particular case and therefore has ramifications on the administration of justice in general.

In actual practice, however, judicial decision-makers are not impervious to the influence of extensive pre-trial publicity, as Kassir et al. (2009) show through empirical study. The discovery is a serious one with ramifications for how the administration of justice in such cases is managed, when the media reports are extreme and polarized.

The presumption of innocence is not subject to negotiation and must be respected whatever the seriousness of the alleged offence, and whatever the identity of the accused. The impact of media trials is most evident in the case of Aryan Khan where the final verdict of the formal justice system was that there was no point in prosecuting him. As Blackstone has famously said: It is better for ten guilty people to go free than for one innocent person to be condemned. There is a principle that requires that in media coverage of criminal cases, there be restraint, accuracy and respect for due process. The Nirbhaya case and the Aryan Khan case highlight two sides of the coin of how media pressure has affected the presumption of innocence: one as a force for good, in the Nirbhaya case when its influence secured an amendment to the Indian laws; and the other as a force of evil in the Aryan Khan case, where the pressure and the public outrage were shown to be wrongfully directed at a victim about whom there were no charges against him.

Media Impact Mechanisms

Media's impact on the criminal justice is not monolithic, but rather comes in various intertwined forms that act simultaneously to influence the public's attitudes, the behaviour of criminal justice institutions, and the decisions made by judges. In order to grasp how media became an active participant in the criminal justice system, it is important to grasp these mechanisms. In this section, the major ways in which the media influences criminal trials and public opinion are explored. 1. Sensationalist Reporting

One of the most potent and significant ways in which media shape public understandings of criminal cases is by means of sensationalism. Sensationalist reporting means reporting that

focuses on emotional appeal, drama and audience interest rather than accuracy or context and balance. This is most evident in criminal cases with the use of sensationalist headlines, visual imagery, emotive language and the deliberate exaggeration of the most sensational detail to provoke the largest reaction from the public.

A commercial model of modern media institutions encourages sensationalism. In media markets that are competitive, news channels rely on audience ratings and advertising revenues, which are significantly boosted by drama and emotion. It is often the case that this commercial drive trumps journalistic duties of accuracy, balance and restraint, especially in high-profile criminal cases where the public interest is already high.

The sensationalist reporting creates some definite consequences in the criminal justice process. It builds pseudo-moralistic stories of wrong and right which have little to do with the legal intricacies of the matter. It produces excessive public emotional reactions which manifest themselves in pressure on judicial and governmental institutions. It also has the advantage of building a lasting impression in the minds of the public that are not necessarily removed by subsequent court verdicts, and that people who were acquitted by the court continue to be viewed as guilty by a public for whose minds were made up by sensationalist media coverage.

2. Selective Presentation of Evidence

Selective presentation of evidence and information is a very powerful way in which media influences perceptions of criminal cases. In the case of a criminal trial, media outlets do not tell the whole story: they highlight and frame certain aspects and evidence to fit certain story lines. This selective presentation distorts the case in the public mind and often significantly from the evidentiary record before the court.

This mechanism works in a number of ways. Discrediting details about the accused are given disproportionate attention, and exculpatory information is either de-emphasized or ignored. The prosecution witnesses statements are reported on prominently, while statements made by defense witnesses, arguments and responses received comparatively limited attention. A criminal record and/or background of the accused is emphasized to build a story of inherent criminality, irrespective of the legal relevance of the charge against the accused.

Selective presentation is a serious problem when conducting a bench trial. If there is months

of selective media coverage between the time the decision makers are exposed to it and the time of the trial, it is very hard to obtain a true impartial standpoint. Media construct a selective information environment which carries a message to the public, which makes it easier to mould the worldview of the populace and establishes circumstances in which the assessment of evidence is in a systematic way distorted.

3. Prime Time Debates and Parallel Trials

In the Indian context, one of the most peculiar and controversial ways of media influence is the manner in which prime time television debates are conducted as a form of 'parallel trial' of accused persons. These debates, airing on major news networks during times of high viewing, see anchors, legal experts, politicians and social commentators all discussing the guilt of the accused, the lackadaisical investigation, what should be done next — none within the confines of a proper legal process, and no legal requirements for evidence or procedure.

The televised deliberations present a number of serious issues to the integrity of the criminal justice process. They bring what they believe to be strong arguments on guilt to the potential witnesses, jurors and even judges before the formal proceedings have even begun. They establish expectations for verdicts and sentences that then affect judicial decision making. They also offer a space for the spread of unverifiable information, comment and speculations that would be unfit for public consumption in court, yet which can choose up to millions of viewership and make an impact on public opinion powerfully.

The Supreme Court of India have expressed concern on many occasions about the conduct of press trials and their impact on the trial of a case. In *Sahara India Real Estate Corporation v Securities and Exchange Board of India* (2012) the Supreme Court accepted the balancing of the freedom of press with right to a fair trial, where media reports could have an impact on the administration of justice.

4. Social Media as an Amplification Mechanism

Social media has changed the nature, and multiplied the impact, of media's influence on the criminal justice system. In contrast with traditional media that works through institutional structures that have some degree of editorial control, social media allows information, opinion and prejudicial information to be disseminated to large audiences, in various formats and in

real-time, without the presence of any editorial oversight.

In the high-profile criminal cases, social media is a place where the public makes instant, strong judgments with emotion. Hashtag campaigns activate mass opinion on specific stories. In just hours after an incident, public perceptions are set by viral videos and images often without proper context. Communities that are formed online surround specific viewpoints, allowing the one-sided story to be reinforced over and over, while different viewpoints are systematically pushed away.

The amplification effect of social media is especially important because it isn't confined by the typical constraints of broadcast media and happens around the clock. The pressure of public opinion generated by the social media is sustained over time and it is amplified, because it is not possible to produce pressure of this magnitude with traditional media. Moreover, social media has the power of anonymity, which allows extreme views to be expressed and allows those accused, witnesses and defense attorneys to be targeted, significantly impacting the way legal proceedings are conducted.

5. The impact on Investigative Agencies

There's a process that's relatively under-studied but has a very real impact on criminal justice and that's how the media affects investigative agencies. Such institutions under intense media attention are subjected to significant pressure to take visible and swift action to investigate a matter, whether or not it is appropriate or supported by the available evidence.

There are a number of distinct patterns of this pressure that are observable. Arrests are made too early due to public pressure, as a result of media attention, without adequate evidence to support prosecution.

Information regarding ongoing Accused's rights are violated and investigative integrity undermined through the leak of investigation(s) to the media.

Investigative resources are Not distributed proportionately, but spread out in line with the media's attention given to a case rather than objective assessment of severity and priority.

The Aryan Khan drug case of 2021 is a good example of this. The Narcotics Control Bureau (NCB) has carried out a search and arrest and launched an investigation which attracted huge

media attention and spurred public interest. The removal of the name of Aryan Khan from the final chargesheet does pose questions about what factors influenced the initial investigation - was it based on facts or was it influenced by the institutional pressure generated by media and the public.

The ways the media affects criminal justice are numerous, complex, and inculcated within the structural and business norms of current media organizations.

Sensationalist reporting, selective All of this -- presentation of evidence, prime time parallel trials, social media amplification and pressure on investigative agencies -- creates an environment where the formal criminal justice process takes place in a state of constant external influence. These mechanisms are not simply informing the public opinion, but are also helping to shape the conditions that are involved in the administration of justice.

In order to achieve the goal of minimizing the adverse impacts of media on criminals, it is not enough to have regulatory policies that control media behaviour, there needs to be a wider understanding of the systemic role of the media in the legal and judicial sphere.

Sensationalist Reporting Styles

One of the hallmarks of modern media portrayal of crime is sensationalist reporting. It is a conscious editorial effort that seeks to present criminal proceedings in a manner that would maximize the emotional appeal, audience and commercial value of the presentation, not to provide information to a democratic public. The sensationalism in journalism has been around before the electronic media, but in the twenty-four hour news cycle, digital media and algorithmically driven content distribution, it's a phenomenon that has grown in scope, depth and impact. In this section, the authors consider the nature, manifestations and repercussions of sensationalist reporting practices in the context of criminal justice.

1. The American Crime Writer's Handbook

Crime sensationalism is not an accidental or incidental good practice — it's a result of the structural and commercial environments in which today's media institutions function. The shift towards "market driven" and/or "editorial independent" journalism has led to institutional incentives that systematically favour the production of content that is sensational, emotionally charged and conflict-driven, rather than content that is measured, contextually rich and full of

information.

Sensationalism is a particular area of interest in crime and criminal justice. Criminal cases have all the ingredients of conflict and suffering, of moral judgment and social anxiety that naturally engender public interest. This is exploited by media agencies, which often depict criminal cases as a drama with distinct protagonists and antagonists rather than a legal case where careful analysis is required. This narrative oversimplification is done for commercial purposes and is also called into question the public understanding of the legal process.

The roots of the sensationalist crime reporting in India can be traced back to the late 1990s and the early 2000s when the television news industry started competing in a creative way. The sensationalist crime reporting in India dates back to the late 90s and early 2000s, when the television news industry started to grow competitively in a creative way. The emergence of private news channels led to a highly competitive media space, where one way of differentiation was to produce drama. This shift in structure had a transformational impact on norms and practices of crime reporting in Indian journalism

2. Characteristic Features of Sensationalist Crime Reporting

In criminal cases, sensationalist journalism has several discernable and predictable traits that set it apart from good journalism.

One of the most far-reaching aspects of sensationalist crime reporting is Labelling and Prejudicial Language. Labels and descriptors used by the media often have strong moral and criminal connotations and are used with reference to accused persons without having been determined by any court of law. The accused's names are used to establish their identity as a “monster,” a “predator,” a “mastermind” and a “criminal” before they are given the chance to put their case before a judge. This linguistic practice systematically challenges the presumption of innocence and builds a public image of guilt, going beyond the results of subsequent legal proceedings.

Another characteristic feature of excessive Personalization is when the media give more attention to the personal life, background, relationships and private history of the parties involved in a criminal proceeding than to the legal issues at such a proceeding. This personalization not only makes the audience feel like it's speaking directly to them, but also

converts complex legal issues into simplified human-interest stories that have little similarity to the evidentiary and procedural issues that will be addressed before the court.

Repetitive and Disproportionate Coverage refers to sensationalist coverage by the persistent and disproportionate allocation of media coverage to specific cases. Some crimes get years of continuous coverage through a variety of media and some get very little attention, even if they are serious. This doesn't happen because of the legal importance of the case, but because of how it looks as entertainment and to the audience. The result is a systematic bias in the public perception of crime trends and priorities for criminal justice.

Graphic and Disturbing Visual Content is a frequently used tool in sensationalist crime reporting that evokes an emotional response from viewers. Continuous exposure to disturbing imagery and crime scenes with distasteful interviews with victims or their families can increase public emotional involvement with the case while also demeaning the dignity of the victim(s) and the case itself, and possibly even prejudicing the case.

3. Sensationalism and the Sheena Bora Murder Case

The sensationalist news reporting in the Indian news media and its implications on the criminal justice process can be seen in the recent Sheena Bora murder case that came to public limelight in 2015.

The case was a murder investigation against a top media executive, Indrani Mukerjea, and received instant and sustained media coverage due to its interplay of factors – high status of the accused, alleged family dysfunction, corporate ties and the sensational nature of the alleged murder. Indian news media, from the first time of Indrani Mukerjea's arrest, adopted virtually all the hallmarks of sensationalist reporting.

Reconstructions of possible events, theories about the motivation and close scrutiny of personality and relationships were covered in prime time news on every channel. The accused was sent for intensive character evaluation by the anchors and commentators on various platforms that built up a long narrative of his guilt on selective and most of the time unverified information. The personal and professional history of the accused was put under the microscope and laid out in an interesting manner to build a picture of criminality that went far beyond the charges that faced the court.

The case continued to be litigated for several years with sporadic media attention intermittently bringing it to the public's attention with fresh charges, witness statements and procedural events. This continuous reporting established a continuous public narrative of guilt, separate from and parallel to the formal court proceedings. In May 2022, the Bombay High Court granted bail to Indrani Mukerjea, who had been in custody for more than six years as an undertrial and had been focused on in media reports as the accused for the alleged offence.

In the case of Sheena Bora, sensationalist reporting has kept a narrative alive for a long time about a "guilty" perpetrator and has created an environment for the formal justice process to be influenced by this prejudiced reporting for the public.

4. Regulatory Framework and Limitations

A regulatory structure is in place, while some issues remain. There is a regulatory framework in place, with some limitations.

Sensationalism reporting has been far from ignored under India's regulatory regime. The Press Council of India has set guidelines that specify criminal cases' media coverage must be accurate, fair and restrained. These guidelines are especially concerned with the publication of material that could prejudice the ongoing proceedings or infringement on the rights of accused persons.

But the power of these regulatory mechanisms has always been hampered by a number of structural issues. The Press Council of India does not have any coercive powers and can only issue advisories and reprimands, which do not have any legal binding effect on the offending media organisation. The guidelines are mostly relevant to print media, and there is no consistency of guidance or enforcement for the extension to electronic and digital media. Moreover, the pressures of news business incited by the commercial interests of sensationalist reporting provides strong institutional incentives to ignore the non-binding regulatory advice on a regular basis.

The Supreme Court of India has recognised the failure in the current regulatory systems to avert the ramifications of media trials. In *Rajat Prasad v Central Bureau of Investigation* (2014) the court reiterated the principle that media coverage must not be allowed to prejudice the right of the accused to a fair trial and the court recognised the systemic nature of the

problem, but failed to lay out a comprehensive remedial framework.

The sensationalist nature of the media's reporting is a fundamental conflict between the business needs of the media companies and the process of a fair criminal justice system. The hallmarks of sensationalist crime reporting – prejudice in labelling, over-personalization, disproportionate coverage, and graphic visual reporting – are all interwoven to create a public opinion that is continually shaped around narratives of guilt that are not bound by the legal process or evidence. The case of Sheena Bora is a perfect example as to how these practices enable the perpetuation of media-made narratives of guilt for years upon years, at great cost to both individual rights and judicial integrity. This needs to be addressed through a regulation that has the authority and capacity to enforce its provisions, and a re-thinking of the editorial norms that are used to cover crime news in Indian journalism.

Pretrial Publicity Effects

Pre-trial publicity is a phenomenon that can affect any aspect of the criminal justice process and holds special importance among the different pathways by which media affects the process. It is specifically about media reporting concerning a criminal case before and during formal trial proceedings, not just the factual reporting but also the editorial opinion, alleged confessions, character assessments and unverified information about the accused. Pre-trial publicity is different from other forms of media influence because it is directly involved in the adjudicative process; it affects the environment in which the adjudicative process takes place, the environment in which the person who determines guilt or innocence is supposed to operate.

1. Psychological effects on decision makers

There is ample empirical evidence to support the effects of pre-trial publicity on judicial decision making. Those entering proceedings with prejudicial pre-trial coverage are not neutral evaluators, but people with their impressions already formed, and it is extremely hard to change their minds. Research shows that decision-makers are prone to confirmation bias, where they will unconsciously allow evidence to be taken as confirmation of the media-created guilt narrative but run it down if it contradicts it. The anchoring effect also means that the initial media impression had a greater effect than the evidence presented at trial, which in turn means that the anchoring effect must be taken into account in subsequent judgments.

2. Aarushi Talwar Case

Aarushi Talwar murder case, 2008, is the best documented example of pre-trial publicity effects in an Indian context. The case in question was the death of the Noida domestic worker Hemraj Banjade and Aarushi Talwar, a 14-year-old girl. Early on, Indian media built up a narrative of guilt toward Aarushi's parents Rajesh Talwar and Nupur Talwar, which is largely drawn from unverifiable information that came from investigative sources. Over time, news outlets and publications spread prejudicial and speculative information, effectively putting the accused on trial before a formal investigation, trial or judgment.

Both the accused were convicted by the trial court in 2013 and sentenced to LIFE IMPRISONMENT. In 2017, however, both were acquitted by the Allahabad High Court on the grounds that the prosecution had not been able to prove the accused's guilt beyond reasonable doubt. The Talwars' years of prison time that followed a conviction which was eventually overturned on appeal is a tangible and inevitable outcome of the presumed guilt climate engendered by the pre-trial publicity.

3. Judicial Response and its Limitations

The Supreme Court of India in the case of *R.K. Anand vs Registrar Delhi High Court* 2009 established that “restriction on press freedom takes precedence over a proper trial before a court of law” and that “media coverage which prejudices a fair trial” is “contempt of court.” The Contempt of Courts Act 1971 is the most important legislation that deals with prejudicial publications. The provision has not been consistently applied in practice and the standard for establishing prejudice from pre-trial publicity by the media has been challenging to meet, rendering the law framework as inadequate as it is to systematically deal with the consequences of prejudicial pre-trial publicity.

The effects of pre-trial publicity are among the best-documented and most accepted threats to fair criminal proceedings. The Aarushi Talwar case, which is emblematic of a sustained prejudicial coverage that has brought about irreversible human consequences, is a stark reminder of the potential for miscarriage of justice. A truly fair justice system should establish procedures to deal with pre-trial publicity, both theoretically and practically.

Legal Procedural Challenges

Media influences and interactions with the Criminal Justice system create significant legal and procedural issues at the core of the Criminal Justice system. Such obstacles take the form of more than just reputational or social issues, it is a real disruption of the fundamental rules of the game and of the procedures that protect the administration of justice.

1. Challenge to the Right to Fair Trial

Right to a fair trial is guaranteed under the Indian Constitution as an integral part of the right to life and personal liberty, guaranteed by Article 21 of the Constitution. Media trials blatantly offend against this right, as they leave the ability to achieve genuine procedural fairness extremely difficult. If an accused has been exposed over months to prejudicial coverage that has developed a public story of guilt, formal trial processes are conducted in an environment which is permanently tainted by that coverage. The Indian legal system does offer a few options for those who are accused of crimes and whose case is held up due to prejudicial reporting in the media, but these are limited and are disproportionately available to those in precisely the case that most needs media protection.

2. Effect on Witnesses' integrity

The reliability of the witness testimony in criminal cases is seriously challenged in media reporting. Memory contamination is the phenomenon of witnesses unconsciously being affected by media narratives and adding them to their own memories. Additionally, there is social pressure on witnesses against a publicly denounced accused that can hinder them from being honest and thorough witnesses. These consequences impair the reliability of the evidentiary record, which current systems to protect witnesses are poorly equipped to handle.

3. Defends the U.S. Defense of the 1990s and the early 21st century

In the context of cases that are widely discussed in the media, defense lawyers work in a social and professional sphere dominated by guilt narratives. Competent lawyers are turned off from taking accused cases in high-profile matters due to the chilling effect of public hostility coupled with professional criticism and threats. However, those who choose to embrace such representation can adjust their practices to the expectations of that audience as well as to the expectations of their clients.

4. Investigative Leaks to Media

Confidential information leakages in the systems of the police and security forces to the media are among the most procedure-dependent but under-addressed issues of media trials. When information is leaked to the public via the media and it cannot be adduced at trial, it is never considered. Alleged confessions, illegally obtained evidence and unverified allegations enter the public domain and decisively influence the perception of guilt – even if they are legally inadmissible. Official secrets legislation and the rules of service only technically forbid such leaks, and the culture of allowing investigative agencies to have contact with the media generally is not being challenged by the leak of an official.

The Regulations do not limit the powers of the Board.

The two main legal instruments available to deal with the consequences of the media trials are contempt jurisdiction provided by the Contempt of Courts Act, 1971 and the regulatory power of the Press Council of India. There are some major structural constraints for both. In practice, the standards for contempt to be established for coverage in the media are very hard to meet. The Press Council has no coercive powers of enforcement and its power is not vested in electronic and digital media, which are the most common means of prejudicial coverage in the modern world. This creates a system of regulation that recognizes the issue but lacks the necessary tools to address the issue in a systematic way.

All the legal and procedural difficulties created by media trials indicate a justice system that is exposed to continuous and relatively unrestricted influence from outside forces. This demands deep, sweeping reform of laws, tighter application of regulation and a concerted judicial effort to safeguard the integrity of the process from the pervasive temptations of today's media environment.

Regulatory and Ethical Standards

Media coverage of criminal trials is one of the most controversial policy issues in today's democratic government. The presence of legal structures and ethical guidelines on how to report on criminal cases is an indicator of the legal institutions' awareness that the 'free' media in the realm of criminal proceedings poses serious threats to the integrity of the process. This part explores the current regulatory and ethical framework that regulates media reporting in

India, the deficiencies in the existing system and the principles that would define responsible media reporting in relation to the criminal justice system.

1. Existing Regulatory Framework

In India, the regulatory framework for regulating media behavior is multi-layered. In the constitutional arena, the freedom of speech and expression is guaranteed by Article 19(1)(a) and the right to reasonable restrictions are provided by Article 19(2) in the interests of public order and the administration of justice, and it is clear that press freedom is not absolute, and can be lawfully limited by the requirements of fair criminal proceedings.

The most significant piece of legislation designed to control conduct of the media which interferes with the course of proceedings is the Contempt of Courts Act 1971. It is a definition of criminal contempt that includes “publications which are prejudicial to the administration of justice or interfere with judicial proceedings”. But its use has been inconsistent and its application by institutions was met with reluctance, reducing the impact of its deterrent effect on media organisations engaged in prejudicial coverage.

The Cable Television Networks Regulation Act 1995 sets out content requirements for television broadcasters which include bans on content likely to promote violence or to challenge the maintenance of law and order. These provisions have largely gone unenforced in the context of criminal proceedings and could have application to sensationalist crime reporting.

2. Press Freedom in India

The Press Council of India set up under the Press Council Act, 1978 is the main selfregulatory organization in the print media. It has set out guidelines for coverage of criminal cases covering guidelines on identification of the accused and reporting of alleged confessions. But because of its limitations, it has no coercive power to enforce and has only the authority of warnings and reprimands, which carry neither financial nor operational penalties for offending publications. More seriously, its reach is limited to newspapers and not television or internet, where the biggest events of criminal trials are now broadcast.

3. Broadcasting Self-Regulation

The News Broadcasting Standards Authority, set up by the News Broadcasters Association, ensures regulation of the content of television news. As an industry self-regulatory body, it has jurisdiction over television broadcasting, and has ruled on complaints of prejudicial criminal coverage, but its effectiveness is not undermined by this. It is not compulsory to join, it does not impose significant sanctions on big commercial broadcasters and its institutional structure is undermined by the fact that it must report to the industry that it regulates. These restrictions are part of a larger conflict between commercial media values and those of the public interest that self-regulation is not a realistic solution to responsible criminal justice reporting.

4. Ethics in the Reporting of Criminal Justice Activities

The moral issues surrounding criminal justice reporting are a separate “standard” that is required of responsible reporting. This standard is based on four key principles. The principle of accuracy must be followed, which means that the information must be based on the verified information and that speculation must be separated from established facts. Fairness requires a fair presentation which should not assume guilt or innocence. The principle of ‘minimising harm’ calls for restraint in providing information that creates disproportionate harm, such as identification of accused persons prior to conviction. The principle of independence requires that coverage be done free of commercial pressures which could bias or affect accuracy and fairness. These values are systematically endangered in the reporting of high profile crime cases by the commercial and competitive necessities of modern Indian journalism.

5. The Judicial Directions as a Regulatory Mechanism

The Supreme Court has been increasingly taking on regulatory functions by means of its contempt and supervisory powers, to acknowledge the fact that the existing frameworks are not adequate. In *Sahara India Real Estate Corporation v SEBI* 2012, the Supreme Court formulated the principle of ‘postponement order’ where it held that the court may grant postponement of publication of the order, if it is capable of causing real and substantial prejudice to the pending proceedings. In the case of *Rajat Prasad v CBI* 2014, the court once again reiterated that the media should not be allowed to put a strain on the right to a fair trial. On the one hand, these judicial interventions provide the most effective regulatory mechanism

available, but on the other hand they are reactive, rather than preventive, – intervening in already prejudicial coverage in the case of damage to the individual, than preventing the systematic patterns of prejudicial coverage in high-profile criminal cases.

Freedom of Press

Freedom of press is one of the cornerstones of democratic rule, and is one of the institutional structures by which the use of state power is held to public account and is open to public scrutiny. A free and independent press in criminal proceedings serves a variety of important democratic functions: reporting on the activities of the police and other law enforcement officials, highlighting errors in the administration of justice, revealing prosecutorial practices and holding the administration of justice publicly accountable. The very same freedom that allows the media to fulfil the democratic functions to which it is entrusted can also bring conditions in which media reporting of criminal proceedings can pose problems for the fairness and integrity of the very justice system that the media is supposed to hold accountable.

1. Constitutional Protection of Press Freedom in India

The freedom of press in India is protected by Article 19(1)(a) of the constitution which guarantees that all citizens have the right to freedom of speech and expression. Freedom of the press has long been recognised as an integral part of this guarantee and freedom of the press has always been recognised as being essential to the functioning of a democratic society. In *Express Newspapers Pvt Ltd v Union of India* 1958 the Supreme Court had again reiterated the special status of freedom of press in a democratic society and said it is the means of public opinion and dissemination of information.

This constitutional protection is however not unqualified. Article 19(2) allows reasonable restrictions on freedom of speech and expression "in interest of the sovereignty and integrity of India, security of the state, public order, decency and morality. For the purposes of this discussion, Article 19(2) further allows for restrictions with respect to contempt of court, which explicitly acknowledges that the need of an effective and independent justice system could justify restrictions on press freedom in particular cases.

2. The Central Tension of Press Freedom and the Right to Fair

The greatest and most lasting tension between Press Freedom and Criminal Justice is in fact

the struggle between two values guaranteed in the constitution namely, the freedom of the press in Article 19(1)(a) and the right to a fair trial in Article 21. Both are of constitutional essence and one cannot be said to be categorically better than the other. The issue for courts, legislators and regulators is when the exercise of freedom of the press in the reporting of criminal proceedings becomes prejudicial interference with the administration of justice.

In *Sahara India Real Estate Corporation v SEBI* 2012, the Supreme Court of India squarely faced this tension and held that fair trial rights are not the only ones being infringed on, but that press freedom is also being compromised – and thus cannot be simply resolved against one of the rights or the other, but must be balanced contextualised within the competing constitutional values. In cases where there is a "real and substantial risk that the publication will be detrimental to the proceedings in the trial, the court has an order to postpone the publication, creating a judicial mechanism to balance the two values of press freedom and a fair trial but placing neither of them on a pedestal but rather working to protect the "essential core" of both.

3. Press Freedom as a Protector against the Misuse of Justice

It is crucial to understand that press freedom is not only a risk to fair justice but also forms a vital barrier to injustice. In the past, investigative journalism was vital to revealing wrongful convictions, uncovering flaws in the criminal justice system, and giving voice to the voiceless. Throughout history, investigative journalism has served as a powerful tool for uncovering wrongful convictions, exposing systemic flaws in the criminal justice system, and providing a platform for the voices of those who have been marginalized in the formal justice system.

Media, in the Indian context, on several occasions, has highlighted cases of wrongful detention, custodial abuse or prosecutorial misconduct which may not have come into the formal justice system. The democratic purpose of press freedom as a check on the criminal justice system is therefore not only a valid justification for press freedom, but a real contribution to the quest for justice to which any regulatory system must look back.

This aspect of press freedom brings in an important precondition to the criticism of media over criminal proceedings. The problem is not freedom of the press, but the way in which the freedom of the press is used, that is, the difference between investigative journalism with public interest as its goal and sensationalist journalism with commercial interests as its goal

that tramples upon individual rights and judicial integrity.

4. Digital Media and the Expanding Boundaries of Press Freedom

Digital media platforms have made it more complex to the constitutional and regulatory landscape of press freedom in a criminal court procedure. The classic understanding of press freedom has emerged in the context of institutional media organizations that sit under a professional and regulatory framework. Digital platforms allow for information to be spread about criminal proceedings without the involvement of any bodies or people outside these frameworks, who are not bound by any professional or ethical code.

The Information Technology Act 2000 and the subsequent amendments offer a partial legal approach to the problems created by harmful digital content, but are not well developed in the context of prejudicial coverage of criminal proceedings. Under the Act, the intermediary liability regime is limited in its obligations for digital platforms with regard to the removal of harmful content, but doesn't contain similar proactive obligations for coverage of criminal proceedings to those of traditional media organisations.

This loophole has real-world implications. Digital platforms are a major source of content about criminal proceedings that is prejudicial to the accused, and of content that reaches audiences of comparable or greater size and is outside the scope of existing regulation mechanisms. This deficiency can only be resolved through legislative development that brings meaning to the application of relevant regulatory principles to digital media coverage of criminal proceedings, without placing any restrictions on legitimate public interest journalism that would be inconsistent with constitutional protections of press freedom.

Contempt of Court

The core way the judiciary ensures the integrity of the current trial is through contempt of court. Contempt of court is the main remedy the court has for protecting the integrity of the trial from any external influence, such as prejudicial media coverage. Thus, what it covers, how it is applied and the boundaries of its use are central to an analysis of the interaction between the media's role and the criminal justice system.

Contempt of Court in India is mainly regulated by Contempt of Courts Act 1971 which identifies the contempt in two kinds of civil and criminal contempt. Media trials are relevant

to criminal contempt, because the last of the acts listed in Section 2(c) is publications which scandalise the authority of any court or prejudice the administration of justice or proceedings thereat. The Supreme Court and the High Courts have inherent power to punish contempt and the punishment is prescribed as simple imprisonment for six months or a fine of two thousand rupees or both.

The sub judice rule is the particular manifestation of contempt rule in the context of news coverage of pending cases. It bans the publication of alleged confessions, opinions on guilt of the accused and dramatisation of alleged events in pending cases. But its actual application has been significantly undermined by a lack of a proactive mechanism that can stop violations from happening and institutional complacency in applying the contempt jurisdiction against media organisations.

In numerous cases the Supreme Court has discussed this relationship. In *Re Harijai Singh* 1996, it was decided that the right of the press to publish information about the court proceedings has to be balanced against the overriding need to avoid interference with the administration of justice. However, in *Sahara India Real Estate Corporation v SEBI* 2012, the court laid down the rule of postponement orders and allowed the court to impose postponement of publications that carry "substantial and real prejudice" to the pending proceedings.

Theoretically, the contempt jurisdiction is significant, but in practice it has significant limitations. A maximum fine of two thousand rupees is a punishment of little or no deterrence for the commercial broadcasting organisations, which make hundreds of crores of rupees annually. This basic imbalance between punishment prescribed and scale of business defeats the whole purpose of the contempt jurisdiction as a deterrent. In addition, contempt proceedings are reactive, following prejudicial coverage and their impact, and have no power to combat systemic patterns of prejudicial coverage, such as those in media coverage of highprofile criminal cases.

Conclusion

This research paper has shed light on the intricate and impactful relationship between media trials and the Indian criminal justice system, drawing on the example of the Nirbhaya case of 2012 and other notable cases such as the Aryan Khan drug case in 2021, the Aarushi Talwar murder case and the Sheena Bora case. The research carried out in the foregoing parts of this

study has established that media presence in the criminal justice process is not an unplanned and marginalized phenomenon, but rather a systematic and structurally embedded phenomenon that has great impact on the fairness, integrity and legitimacy of criminal justice process.

The study of public opinion and public influence revealed that the media is not only a source of information for public opinion but is also a creator of public opinion; that is, it creates organized calls, demands, and pressures on the judicial and governmental institutions, which can be proven with the analysis of public opinion. The Nirbhaya case vividly demonstrated how an issue that had captured the media spotlight turned into a groundbreaking piece of legislation in form of the Criminal Law Amendment Act 2013, and how it also posed questions that cut right through to the heart of whether institutional action was based on legal thinking or the calls of the street.

The study of presumption of innocence revealed that the principle of criminal jurisprudence is faced by a systematic challenge of the contemporary media. But the Aryan Khan case has been a clear example of the reputational and personal damage wrought by media trials, even if no charges of wrongdoing are ever ultimately proven against them.

Overall, the analysis of media impact mechanisms, sensationalist reporting styles, pre-trial publicity effects and legal procedural issues confirmed the complexity of how the media influences the decision-making process at every stage of the justice system by defense counsel, investigators, and judges. The Aarushi Talwar case was a stark example that biased reporting can lead to injustice, the impact of which can be irreparable even after appeal.

An analysis of the regulatory and ethical framework for the conduct of the media identified a significant shortfall in the ability of institutions to respond to the scale of the challenge. The Press Council of India, the News Broadcasting Standards Authority, the contempt jurisdiction of courts and provisions of Contempt of Courts Act, 1971 are a framework which recognises the issue without the power to systematically deal with it. The balance between press freedom (enjoyed under Article 19(1)(a)) and the right to a fair trial (enjoyed under Article 21) is not sufficiently balanced in current legal and regulatory frameworks.

The overall conclusion to be drawn from this paper is that there is an urgent need to revisit the relationship between media and criminal justice in India and to take a comprehensive look at

it by the legislators, regulatory authorities and judiciary. The rule of law and democratic accountability depends on a free press and its ability to expose miscarriages of justice and hold the criminal justice system to account must not be lost or compromised. But if there is no due process of law and freedom of the press is not properly balanced with respect to the rights of the accused and the integrity of the courtroom, then it undermines the very democratic principles it is designed to defend. What is needed is not simply more regulation but a rethinking of the professional and ethical norms that regulate criminal justice reporting, understanding that the justice system and the press are two complementary institutions, whose working in tandem is necessary for the functioning of justice in a democratic society.

SUGGESTIONS

India's current rules for controlling media during criminal cases are not strong enough. The following changes are needed.

1. India needs one strong and independent body that controls all media-television, newspapers and social media together. Right now no single body has power over all three.
2. Police officers and investigators who leak case information to media must face serious consequences.
3. Strict rules must be made that stop media from publishing leaked confession, guessing versions of crimes while the case is still in court.

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