
TRIAL BY MEDIA: OF WITCH HUNTS AND WRATH CULTURE

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ABSTRACT

With the evolution of print and digital media, television, networking and communication technology, media has assumed a paramount role in our society. The media is now regarded as a harbinger of truth and an essential feature of democracy. It protects the institutions of democracy by ensuring that accurate and essential information is provided to the general public in a timely fashion. However, the media is not devoid of criticisms – one of the latest challenges posed by media and digital technology is that of trial by media, a phenomenon wherein media outlets conduct their own investigation before a case even begins trial, form their own narratives which are imposed on the general public which leads them to form prejudices against parties involved, impeding their right to a free trial. The Right to Free Trial guaranteed under Article 21 is also a fundamental right accorded by the Constitution. Similarly, as laid down in the Indian Constitution, the Right to Freedom of Speech and Expression is a basic fundamental right that is available to everyone subject to certain restrictions. This paper seeks to analyse the gendered bias prevalent in media trials and takes a case-by-case approach to establish the Anglo-Saxon view on media trials.

Introduction

Media as the fourth pillar of democracy - In democratic nations such as India, media is often regarded as the fourth pillar as coined by Thomas Carlyle¹. The three organs of state - Legislative, Executive, and Judiciary function separately and independently of each other. Media acts as a platform through which information is brought to people, creating awareness in society. Specifically in relation to the judiciary, the media plays a paramount role in educating the public about relevant legal provisions, and judicial decisions. Through fair reporting, debates and criticisms, the media enables the public to acquire a better understanding of the rule of law and administration of justice. However, what Lord Acton² stated regarding power and its corruptive influence also rings true with respect to media and liberty. Any institution equipped with power and liberty when left unbridled by any checks or mechanisms is likely to abuse its powers and disrupt civil society as is the case with the press. Over the past few decades, although the media has played an instrumental role in raising awareness regarding various relevant social issues and facilitation justice for the oppressed, it has overstepped its boundaries by encroaching the adjudicatory process of courts by engaging in investigative journalism and turning judicial proceedings into a circus with television channels manipulating facts, needlessly dramatising situations in order to gain eyeballs. Due to an absence of stringent legal provisions governing the coverage of court proceedings, the media has assumed the role of judge, jury and executioner, turning legal proceedings into a battle for television ratings.

Evolution of media trials - Over the past decade, technological advancements have completely changed the nature of media from print to digital, making it the most potent means of communication. The absolute lack of regulation for media outlets on coverage of court proceedings is detrimental to the administration of justice. The media enjoys an unrestrained and self-regulating approach in relation to coverage of judicial proceedings which is disempowering to courts and pernicious for litigants involved especially in high-profile criminal cases. The media, in a battle for television ratings, has resorted to sensationalistic journalism, adding unnecessary sentimental aspects, deliberately manipulating facts, engaging in acerbic speculation on the litigant's character and effectively creating a court of public opinion or "janta adalat". Furthermore, they blatantly ignore the golden principle of "innocent

¹ Bradley Peniston, *Why is media called the 4th estate?*, MVORGANIZING (April 30, 2023, 11:15 PM), <https://www.mvorganizing.org/why-is-media-called-the-4th-estate/>

² Ben Moreell, Power Corrupts, 2 Acton Institute (July 20, 2010, 5:05 AM), <https://www.acton.org/pub/religion-liberty/volume-2-number-6/power-corrupts>.

until proven guilty" to conduct their own investigations and proclaim dictums while the judiciary is still dealing with matters *sub judice*. This results in an adverse impact on the judicial proceedings and creates prejudices in the minds of the public regarding litigants. Specifically with regard to celebrity cases, the media is ruthless, obsessive and intrusive with their coverage oftentimes violating the privacy of the individuals involved. Various studies have shown that media trials have led to the maladministration of justice in cases by imposing prejudicial views onto the general public (consisting of potential jurors) and subconsciously affecting judges, as stated in the Anglo-Saxon view on media trials which has been adopted by the Supreme Court. When covering proceedings of cases involving celebrities, the media often abuses the right to free speech and expression by violating codes of conduct, breaching the Right to privacy and the Right to free trial of the parties.

Freedom of Press - Although it is not expressly stated, the media also derives its powers from the Constitution, similar to the three organs of government. Article 19³ provides for the Fundamental Right of Freedom of Speech and Expression which has been interpreted by the Court to include the Freedom of Press. However, this right is not absolute - it is contained by some restrictions provided under Art 19(2). Furthermore, Article 19 of the Universal Declaration of Human Rights, 1948⁴ also bestows everyone the right to freedom of expression which includes the right to form opinions, impart information and ideas in any manner. Several judicial decisions have also recognised the freedom of press including *Bennett Coleman and Co. vs Union of India*⁵ where the court held that freedom of press is an essential part of Article 19(1)(a) and that it was to be read with that implication regardless of the absence of any express indication by the makers. In *Romesh Thapar vs .State of Madras*⁶ and *Prabhu Dutt vs. Union of India*⁷ and *Brij Bhushan vs State of Delhi*⁸, the court reiterated that freedom of press is an intrinsic part of Article 19 and it includes the right to know about news and government activities. In *Indian Express Newspapers vs Union of India*⁹, the court held "The expression means freedom from interference from an authority which would have the effect of the interference with the content and the circulation of the newspapers and cannot be any interference with that freedom in the name of public interest". The only restriction on the press

³ INDIA CONST. art. 19

⁴ UNIVERSAL DECL OF HUMAN RIGHTS. art. 19

⁵ *Bennett Coleman and Co. vs Union of India*, 1973 AIR 106

⁶ *Romesh Thapar vs .State of Madras*, 1950 AIR 124

⁷ *Prabhu Dutt vs. Union of India*, 1982 AIR 6

⁸ *Brij Bhushan vs State of Delhi*, 1950 AIR 129

⁹ *Indian Express Newspapers vs Union of India*, 1986 AIR 515

regarding coverage of court proceedings is contained in Section 2(c)¹⁰ of the Contempt of Courts Act, 1971. Criminal Contempt includes may act obstructs or interferes with the administration of justice. However, the media largely remains self-regulatory with no independent body or mechanism to censure or uphold a model code of conduct.

Impact of media on trial - One of the primary outcomes of media coverage of court proceedings is the subconscious effect it has on judges. The American view lays down that “judges are not liable to be influenced by the media publications”. Another one is the aforementioned Anglo-Saxon view¹¹ which states, “Judges, at any rate, may still be subconsciously (though not consciously) influenced and members of the public may think that judges are influenced by such publications and such a situation it has been held attracts the principle that, justice may not only be done but must seem to be done”. Cadizo, one of the greatest American judges also agreed with this view. The Supreme Court seems to have adopted the same as stated in the judgment of the case *Reliance Petro Chemicals Ltd vs. Proprietors of Indian Express News Papers*¹². Hon’ble Justice Dharmadhikari, Human Rights Commission also stated that it was possible for judges to be influenced by the overwhelming sway of public opinion in matters of great controversy. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*¹³, the Supreme Court held that “A trial by press, electronic media or public agitation is the very antithesis of the rule of law. It can well lead to a miscarriage of justice. A judge has to guard himself against any such pressure and he is to be guided strictly by the rules of law”.

In *Manu Sharma v. State (NCT of Delhi)*¹⁴ popularly known as the Jessica Lal case, the Apex Court has expressly discussed the danger of trial by media and opined “There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which out rightly hold the suspect or the accused guilty even before such an order has been passed by the court. Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not

¹⁰ Contempt of Courts Act, 1971 § 2, cl. C. No. 70, Acts of Parliament, 1971(India).

¹¹ Devesh Tripathi, *TRIAL BY MEDIA – PREJUDICING THE SUB-JUDICE*, RMLNLU (30 April, 11:10 PM)

¹² Reliance Petro Chemicals Ltd vs. Proprietors of Indian Express News Papers, 1989 AIR 190

¹³ State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997), 8 SCC 396

¹⁴ Manu Sharma v. State (NCT of Delhi), CRIMINAL APPEAL NO. 179 OF 2007 With CRIMINAL APPEAL NO. 157 OF 2007 AND CRIMINAL APPEAL NO. 224 OF 2007

hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defense of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial". An interesting observation in several such media trials is the appalling treatment and humiliation meted out to women irrespective of whether they are victims or accused persons. An analysis of famous media trials in India and across the world reveals a disturbing conclusion for women - there is an extreme gender bias in the coverage of judicial proceedings reflective of the entrenched misogyny which plagued our societies. These media outlets resort to running parallel trials of cases, revealing their identities and photos, character assassinations, discussions regarding past sexual history, and clothing of the women involved especially in cases of sexual assault or other crimes involving women. Women are often subject to intense scrutiny and humiliation from the media and the public, leading to a decline in the faith in judicial systems and machinery. Some instances of gender-biased media trials include :

- **Sheena Bora case¹⁵:** the disappearance and subsequent death of 24-year-old Sheena Bora made headlines for the alleged involvement of her mother Indrani Mukherjea. The case highlighted the abysmal manner in which the media *de facto* conducted a trial in print before a *de jure* case was admitted. Misogyny and stereotypes reigned supreme when newspapers cooked up the perfect murder mystery case involving sex, incest, social climbing, and murder which rivalled soap operas and refuted all logic. In order to gain ratings, the media painted Indrani Mukherjea as the quintessential Indian serial vamp - an evil, cold-blooded seductress, devoid of any morals, who used her sexuality to climb the social ladder and killed her own daughter in the process. The fact that she was educated, career-driven and unwilling to stay in unhappy marriages somehow became a weapon that would be used against her. Even the dead victim - Sheena was not free from this vitriol - her sexual history, lifestyle and her supposed relationship with her stepbrother Rahul became hot topics amongst news channels as if the media was trying to use her case as a cautionary tale of what would happen to girls who were "immoral". All these rumours and theories made by the media outlets were unsubstantial and baseless, not that it seemed to have an effect on the viewers, who lapped up anything the media reported.

¹⁵ Pratim Alias Peter Mukherjea vs Union Of India And Anr , Writ Petition No. 4400 of 2017

- **Noida Double Murder case:**¹⁶ The case refers to the unsolved murders of a 13-year-old girl Aarushi Talwar and the 45-year-old Hemraj Banjade, a domestic servant who worked at her house. Another whodunit case that generated immense coverage, public interest and speculation, the narratives spun by the media and the police officials were baffling and something out of a shoddy mystery novel. In a desperate scramble to gain coverage and responses from the public, news channels asked viewers to send SMSs guessing who the murderer was while the case was still on trial. The media concocted wild speculations about the case alleging that it was a case of honour killing by the father after he had spotted his daughter engaging in sexual relations with the household help. They spun wild stories about the Talwars which ranged from adoption to wife swapping and even criticised them for not appearing sad about their daughter's demise (a recurring tactic used by media outlets to accuse someone). The case depicted the absolute lack of moral conduct exhibited by media outlets and made it clear that even dead teenage girls would be subjected to humiliation and scrutiny from the public regarding their lives.
- **Sushant Singh Rajput case:**¹⁷ one of the most prolific examples of media trials, this case is noteworthy for the inhumane sensationalisation of the death of actor Sushant Singh Rajput and the subsequent social media witch hunt started against his partner actress Rhea Chakraborty. In 2020, actor Sushant Singh Rajput was found dead at his home and his father filed a case against Rhea accusing her of abetting his suicide. What followed was nothing short of a media circus filled with carefully concocted lies, misleading facts and extreme interpretations - Rhea was met with excessive social media trolling campaigns which hurled sexist, origin-based slurs at her and accused her of giving Sushant drugs, having an extramarital affair, living off the actor's money, performing witchcraft and engaging in an incestuous relationship with her brother. The actor's family, former partner Ankita Lokhande and colleagues shamelessly contributed to the furore against her and fuelled baseless allegations on her character, all of which was gleefully reported by media outlets that ran provocative headlines and showed graphic enactments of how Sushant died. While the case was still being investigated by the police, the media ran a parallel investigation accusing Bollywood bigwigs of

¹⁶ Dr. (Smt.) Nupur Talwar vs State Of U.P. And Anr., CRIMINAL APPEAL No. - 293 of 2014 with CRIMINAL APPEAL No. - 294 of 2014

¹⁷ Rhea Chakraborty vs The State Of Bihar, Transfer Petition (Crl.) No.225 of 2020

forming cohorts to exclude and alienate the deceased actor, pushing him to his death. They published intimate details on the actor's life including his personal diary, and his therapist's diagnosis and served fresh narratives each week to their eager audiences. Paranormal experts, underworld connections, sexual assault, the media launched a modern-day equivalent of a witch trial against Rhea and even trended hashtags saying the actor ought to be arrested. The case exposed society's inherent misogyny and rapaciousness to vilify women they deem immoral - in Rhea's case for her profession, origins, clothing, lifestyle, being in a live-in relationship and alleged use of narcotic substances. The media portrayed her as a manipulative seductress who trapped the naive upcoming actor, siphoned off his money, fed him drugs and eventually killed him. They published details about her life including her family, education, and property. The media went so far as to publish intimate photos and videos of the actress to mislead audiences into categorising her as a degenerate opportunist. In stark contrast, the court's (and subsequently CBI's) acquittal of the actress made no noise and her supposed involvement in his murder is largely held to be true by the general public. To this day, the actress faces immense bullying and hatred online including rape and death threats. This case highlighted the perversity and depravity exhibited by media outlets and the gender-class bias prevalent in the coverage of prolific cases.

- **Johnny Depp - Amber Heard trial:**¹⁸ The USA though no stranger to celebrity media trials became the cynosure of all eyes during the highly publicised million-dollar defamation case of actor Jonny Depp and his former wife actress, activist Amber Heard. The trial, which took place in Virginia became a media debacle and transformed a courtroom trial into a zoo. It soon turned into a nightmare for the actress who was subjected to the full wrath of our culture and suffered immense trolling on social media platforms. It all started in 2018 when Heard published an op-ed¹⁹ in the Washington Post opening up about facing domestic violence in her previous relationship. She did not name Depp or anyone else in the article which was initially drafted by the A.C.L.U. and argued for reforms in the Violence Against Women Act²⁰ and for preserving Title IX protections²¹ against sexual assault in schools. What was intended to be a post about

¹⁸ *John C. Depp, II v. Amber Laura Heard*,

¹⁹ Amber Heard, *I spoke up against sexual violence - and faced culture's wrath. That has to change*, WSHNGTN POST, Dec 18, 2018

²⁰ Violence against Women Act, 108 Stat. 1796

²¹ Title IX of the Education Amendments of 1972

the watershed #MeToo movement and the experiences of women quickly became the very death of the movement. In 2020, Depp filed a libel case²² against Heard in the United Kingdom and the Sun publication which called him a “wife beater”. The judge ruled that Depp was guilty of twelve of the 14 counts of abuse claimed by Heard. However, the USA case was a gross miscarriage of justice and the judgment sounded the death knell for victims of domestic abuse across the world. The trial is a travesty for a multitude of reasons, the primary one being the live streaming of a domestic violence case involving abuse and sexual assault. The trial was equivalent to revenge porn in the manner in which it forced the victim to recount every explicit detail of her abuse in front of a court and the entire world. Heard’s testimony of sexual abuse was viciously mocked and caricatured re-enactments followed by speculations about Heard inhaling narcotic substances on the stand. Self-proclaimed legal analysts and body language experts dedicated hours to dissecting and discounting every bit of Heard’s testimony in order to appease the legions of Depo supporters and increase their own views. The six-week trial was religiously followed and soon turned into meme infested circus with empty gestures and meaningless glances interpreted as clues. No stone was left unturned to glorify the bad boy pirate king Depp whose suave, charming demeanour in the courtroom was used to infantilise and free him of all guilt. TikTok creates a painfully comedic narrative of Heard as the histrionic 80s villainess - the manipulative, gold-digging opportunist who trapped the innocent, pure-hearted man used him to advance her own career, abused him and levelled false allegations to ruin his life. Every minuscule action and expression of hers is broken down and analysed. His confidence is pitted against her anxious demeanour, when he smiles, it’s an innocent expression of joy for all the abuse he’s suffered at her hands. When she smiles, she is labelled merciless and seems to enjoy his misery. Heard’s media is embedded with not one but three entrenched biases in society - the trial reflects the misogyny, class divide and queerphobia (Heard is a bisexual woman who comes from a lower-middle-class background). It’s no surprise then that jury ruled in favour of Depp stating that both Depp and Heard were guilty of defamation but awarded higher damages to Depp. The Depp-Heard trial is resonant of the deeply embedded patriarchy in our society - Heard lost the case despite having substantial evidence to back her claims and a previous favourable ruling. The case may serve as an example to victims of domestic abuse who

²² John Christopher Depp II v (1) News Group Newspapers Ltd, and (2) Dan Wootton, EWHC 2911 (QB)

will reconsider filing complaints fearing vitriol and backlash similar to what Heard experienced. Depp's attorneys will set a dangerous precedent for all abusers in court who will take cues and employ the courtroom tactic of DARVO (Deny, Attack, Reverse Victim and Offender) in their own proceedings. Celebrities like Marilyn Manson²³ have already followed suit. Another interesting observation from this case is the narrative of the perfect victim, as remarked by Heard's attorney Benjamin Rottenborn, "If you didn't take pictures, it didn't happen; if you did take pictures, they're fake," he said. "If you didn't tell your friends, you're lying; and if you did tell your friends, they're part of the hoax. If you didn't seek medical treatment, you weren't injured; if you did seek medical treatment, you're crazy."²⁴ This series perfectly encapsulates the Catch-22 situations that domestic violence survivors are met with. If you meticulously record evidence, you are untrustworthy and making a false claim; if you don't, it never happened. If you cry while recounting your abuse, you're pathetic and playing the victim card. If you don't, you're heartless and lying. If you quietly suffer violence at the hands of your abuser, you're weak and incapable of protecting yourself. If you talk back or fight back, you're an abuser as seen in Heard's case.

The bias against women in the media is unrelenting and absolute - it does not take into account whether you are the victim or the accused. As seen in the Solar scam and Gold smuggling cases²⁵ in Kerala, female perpetrators face significantly more hatred and damage than their male counterparts. They are objectified, vilified judged for their crime and character by the general public, unlike men. Irrespective of whether they are guilty or innocent, they undergo several rounds of trial and character assassinations in the court of public opinion. The gender bias in high-profile celebrity cases is apparent - the extensive outpouring of hate against Megan Thee Stallion for filing a case²⁶ against Canadian rapper Tony Lanez. Megan isn't the one on trial but judging by the accounts on social media - one might be mislead that she is. Discussions regarding her past sexual history and experiences have been used to push the narrative that Megan is lying. Megan's case is the epitome of misogynoir - a particular mix of misogyny and racism directed towards black women. The trend of online fervour fuelled by misogyny and misinformation generated against female celebrities who accuse men of destructive or

²³ Kory Grow, *Marilyn Manson Sued for Sexual Assault of a minor*, RLLNG STONE, JANUARY 30, 2023

²⁴ Id. at 18

²⁵ Anne Mary Shaju, *Invoking the Character: Gender Bias in our Media and Judicial Trials*, FEMNSM INDIA, June 10, 2021

²⁶ *Jury finds Tory Lanez guilty of shooting rapper*, BBC, December 23, 2022

inappropriate behaviour does not exempt white women either - as seen in the cases of Amber Heard, Angelina Jolie²⁷ (who is suing husband Brad Pitt for abuse), Kesha²⁸ (suing Dr Luke for sexual assault). This is in stark contrast to the coverage of cases involving male celebrities like Kevin Spacey, Charlie Sheen, and Chris Brown involved in sexual assault cases.

In any justice system be it civil or common law, the right to fair trial is an essential staple of law as guaranteed by natural justice. Such a right of the accused to have a fair trial is guaranteed in Article 21²⁹ of the Indian Constitution which provides for equality before law and equal protection of laws. This has been reiterated in several judicial decisions. However, the right to free trial may be impacted adversely by media trials carried out by the press. Thus, there is an inevitable conundrum between the right to freedom of press and the right to a fair trial. The media's defence is to claim that an absence of freedom of press may lead to an erosion of democracy in its true form. The Law Commission in its 200th report³⁰ titled "Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendment to the Contempt of Courts Act, 1971)" proposed a law to regulate media coverage of judicial proceedings and prohibit media outlets from reporting anything prejudicial to rights of the accused until the trial is over. Such a law could have the effect of striking a delicate balance between both rights. Given the increasingly disturbing phenomenon of media trials, there is an urgent need for a shift in the paradigm from self-regulatory media to legislation-backed institutions with proper mechanisms and codes of conduct in place.

²⁷ Kat Tenbarge and Char Adams, How Tory Lanez trial bloggers are shaping the conversation around Megan Thee Stallion, THE CUT, December 21, 2022

²⁸ Id. at 27

²⁹ INDIA CONST. art. 21.

³⁰ LAW COMMISSION OF INDIA, 200TH REPORT ON TRIAL BY MEDIA, August 2006