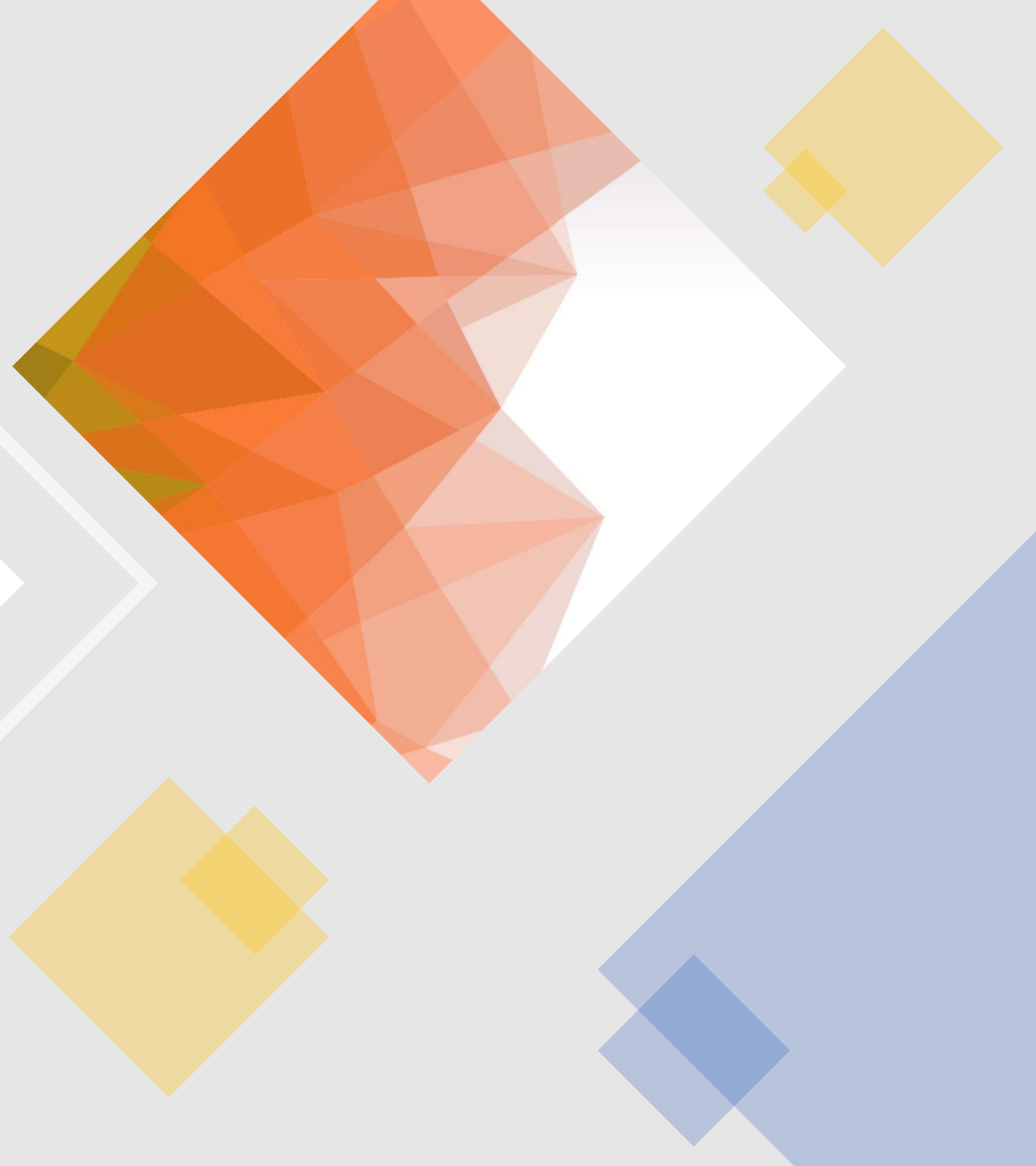


THE PROBLEM OF MEDIA TRIALS

PRANAV VERMA

Assistant Professor

NALSAR University of Law, Hyderabad



- The Bombay High Court in *Nilesh Navalakha and ors. v Union of India and ors.*, PIL (ST) No. 92252 of 2020, Decided On: 18.01.2021, defined 'trial by media' as:

• 'to amount to a trial by media, the impact of the press/media coverage on the reputation of the person targeted as an accused must be such that it is sufficient to create a widespread perception of his guilt, prior to pronouncement of verdict by the court, thus making him the subject of intense public scrutiny for the rest of his life.'

- innocent until proven guilty (in court)
- proof and evidentiary standards?
- principles of natural justice?
- sensationalism?

XXXX v State of Kerala and others, Tr.P (Crl) No. 52 of 2022, Decided on 22.09.2022

- transfer petition on grounds of bias of the sessions court conducting the trial
- petitioner a reputed film actor subjected to sexual assaults in a moving vehicle
- police chargesheet implicating seven accused committing the assault at the instruction of another film actor (8th accused)
- 'It is unfortunate that, in the debates in media ('trials'), causes and issues are prejudged, and the verdicts are passed, expecting the courts to pass orders, sentencing the accused to the maximum, by following their declarations. These so called debates, claimed to be carried out to enlighten the public at large, convey their views (instead of news), without even fully knowing the nature of materials placed before the court, without properly understanding the circumstances under which the courts take decisions and unaware of the legal provisions and principles relied on/applied by the courts. This is not the first time this court was forced to make observations regarding the media trial concerning the case at hand.'

P. Gopalakrishnan @ Dileep and others v State of Kerala, 2022 (1) KLT 774 (connected case):

‘This case has generated a lot of media attention. Mainstream television media and social media have commented upon the way this court went upon its business in handling this case. Observations made in Court during the course of hearing have been dissected and made subject matter of intense discussion. The existence of a vibrant, independent and free press is no doubt essential to democracy. The constitutional Courts in this country have been zealous to protect the freedom of speech and expression but this cannot be a license for persons armed with half baked facts with little or no knowledge of how the judiciary functions and little or no knowledge of the fundamental legal principles that govern it, abuse the justice delivery system.’

citing Judge Hiller B. Zobel: ‘Elected officials may consider popular urging and sway to public opinion polls, Judges must follow their oaths and do their duty, heedless of editorials, letters, telegrams, picketers, threats, petitions, panellists and talk shows. In this country, we do not administer justice by plebiscite’

The Aryan Khan Case

- 3rd October 2021 – Eight persons including Aryan Khan arrested as part of drug bust on a cruise off the Mumbai coast. Aryan and two others charged with possession, consumption and sale of illegal substances under the stringent NDPS Act.
- 8th October and 20th October 2021 – bail applications rejected
- 27th May – NCB drops Aryan's name from the chargesheet
- By next year – SIT of the Narcotics Control Bureau found several lapses in the investigation. Said that Aryan Khan was deliberately targeted – “why it was done is not yet known”; several irregularities; “suspicious behaviour” of NCB officers including zonal director Sameer Wankhede. SIT recommended action against the officers

- But before this vindication, happened the media trial:
- KP Gosavi – an independent witness – described as a ‘fraudster’ by Times Now; Zee News referred to their coverage as ‘nasha, paisa, underworld’; whatsapp chats between Aryan Khan and Ananya Panday ‘leaked’ just before the Bombay HC took up Aryan Khan’s bail plea; NCP’s Nawab Malik’s allegations against Wankehe (Republic TV ran the coverage as ‘NCP v/s NCB’; Time Now ran it as ‘Aghadi versus Narco Bureau’
- And see the graphic made by Aaj Tak...



- SSR – Rhea Chakraborty Case
- Rhea Chakraborty *ki ye aukat nahin hai ki Bihar ke mukhyamantri pe tipanni kare.*
- ‘Daulat Sushant ki, aish Rhea khandan ki. (Sushant’s wealth, Rhea’s family’s luxury.)
- ‘Sushant ka pyaar, Rhea ka hathihaar? (Sushant’s love, Rhea’s weapon?)’
- ‘Her entire game is up!’
- ‘Rhea Chakraborty needs to be called a witch because she does witchcraft.’
- a prominent Hindi news channel ran a programme with the headline, “Sushant par Rhea ka kaala jaadu (Sushant was a victim of Rhea’s black magic)”. An accompanying graphic showed the deceased actor trapped in a glass jar while Chakraborty practiced the said “black magic” on him.



- ‘Cakraborty moved the Supreme Court. Calling what she was going through an unfair “media trial”, the actor had demanded in court that the relentless media coverage of the case be stopped.
- Page nine of the affidavit filed by Chakraborty said, “Sensationalizing and Media Trial of case – the sad incident of the death of Sushant Singh Rajput who hailed from Bihar unfortunately occurred just in wake of elections in Bihar. This has led to the issue of the suicide being isolated and blown out of proportion.””

Sidhartha Vashisht @ Manu Sharma v State (NCT of Delhi), (2010) 6 SCC 1

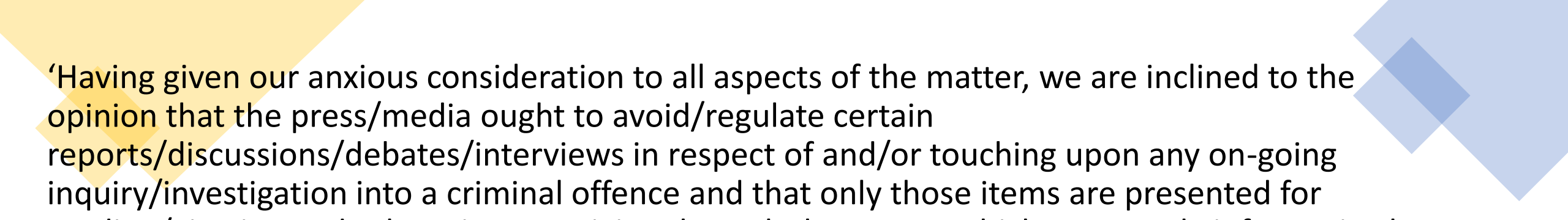
- 'There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or 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 hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence 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.'
- 'Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution.'

- ‘Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible.’

Tehseen S. Poonawalla v Union of India, (2018) 9 SCC 501:

- ‘There cannot be an investigation, trial and punishment of any nature on the streets. The process of adjudication takes place within the hallowed precincts of the courts of justice and not on the streets.’
- *Rajendran Chingaravelu v R.K. Mishra*, (2010) 1 SCC 457
- ‘Premature disclosures or 'leakage' to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law. Be that as it may.’

- Bombay High Court in *Nilesh Navalakha and ors. v Union of India and ors.*, PIL (ST) No. 92252 of 2020, Decided On: 18.01.2021:
- After the unnatural death of SSR, several petitioners filed a PIL praying for guidelines for “ethical reporting and responsible journalism” especially at the pre-chargesheet stage.
- ‘Learned counsel for Republic TV contended with vehemence that "investigative journalism" has brought to light matters of grave concern and interest to the society at large. As a sequel to such activity undertaken by its reporters, Republic TV gathered incriminating materials that could connect the accused with the offence of murder and has honestly endeavoured to place facts for the information of its viewers, which Mumbai Police had been suppressing.
- To our mind, the contention proceeds on a clear misunderstanding of the provisions of the Cr.P.C. If indeed the channel is in possession of information that could assist the investigator, it ought not to be part of a news coverage but it would be the duty of such channel to provide the information that it has to the police under sections 37 to 39 of the Cr.P.C., to facilitate a proper investigation.’



‘Having given our anxious consideration to all aspects of the matter, we are inclined to the opinion that the press/media ought to avoid/regulate certain reports/discussions/debates/interviews in respect of and/or touching upon any on-going inquiry/investigation into a criminal offence and that only those items are presented for reading/viewing and otherwise perceiving through the senses which are merely informative but in public interest instead of what, according to the media, the public is interested in. No report/discussion/debate/interview should be presented by the press/media which could harm the interests of the accused being investigated or a witness in the case or any such person who may be relevant for any investigation, with a view to satiate the thirst of stealing a march over competitors in the field of reporting.’

‘Accordingly, we direct the press/media to exercise restraint and refrain from printing/displaying any news item and/or initiating any discussion/debate/interview of the nature, as indicated hereunder:

a. In relation to death by suicide, depicting the deceased as one having a weak character or intruding in any manner on the privacy of the deceased;



b. That causes prejudice to an ongoing inquiry/investigation by:

- i. Referring to the character of the accused/victim and creating an atmosphere of prejudice for both;
- ii. Holding interviews with the victim, the witnesses and/or any of their family members and displaying it on screen;
- iii. Analyzing versions of witnesses, whose evidence could be vital at the stage of trial;
- iv. Publishing a confession allegedly made to a police officer by an accused and trying to make the public believe that the same is a piece of evidence which is admissible before a Court and there is no reason for the Court not to act upon it, without letting the public know the nitty-gritty of the Evidence Act, 1872;
- v. Printing photographs of an accused and thereby facilitating his identification;
- vi. Criticizing the investigative agency based on half-baked information without proper research;
- vii. Pronouncing on the merits of the case, including pre-judging the guilt or innocence qua an accused or an individual not yet wanted in a case, as the case may be;
- viii. Recreating/reconstructing a crime scene and depicting how the accused committed the crime;
- ix. Predicting the proposed/future course of action including steps that ought to be taken in a particular direction to complete the investigation; and
- x. Leaking sensitive and confidential information from materials collected by the investigating agency;

c. Acting in any manner so as to violate the provisions of the Programme Code as prescribed under section 5 of the CTVN Act read with rule 6 of the CTVN Rules and thereby inviting contempt of court; and

d. Indulging in character assassination of any individual and thereby mar his reputation.



non-exhaustive, indicative guidelines

‘in default thereof, apart from action that could be taken under the prevailing regulatory mechanism, the erring media house could make itself liable to face an action in contempt, i.e., criminal contempt within the meaning of section 2(c) of the CoC Act which, as and when initiated, would obviously have to be decided by the competent court on its own merits and in accordance with law.’



‘It has been urged on behalf of the media houses that on diverse occasions, the guests are invited to speak and address the audience on a particular topic during programmes which are telecast live and, in such cases, it is difficult for the media houses to censor the statements of such guests. What the media houses say could be true, but that would not grant any speaker the license to either abuse or defame any particular individual, who could be the target of the speech, to tarnish his reputation in the eyes of the viewers or to indulge in interference with and/or obstruction to administration of justice by such public speaking. In case of the former, the targeted individual could sue the media as well as the speaker for defamation, which must ordinarily sound in damages but in case of the latter, both the media house and the speaker may be proceeded against for criminal contempt.’

‘At the same time, while emphasizing on the need for a free, fair, effective and meaningful investigation of an FIR disclosing commission of cognizable offence by an accused be it a celebrity or an ordinary person to be conducted by the investigative agency, we also consider it appropriate to remind the investigative agencies that they are entitled to maintain secrecy in course of investigation and are under no obligation to divulge materials thus collected. If indeed there is leakage or disclosure of materials, which has the potential of stifling a proper investigation, it could pave the way for such information being laid before the competent court having powers to punish for criminal contempt under section 2(c) of the CoC Act and in an appropriate case, for being dealt with in accordance with law.’