

“MEDIA TRIALS AND TEST IDENTIFICATION PARADES: AN INQUIRY INTO THE EROSION OF FAIR TRIAL RIGHTS THROUGH PREJUDICIAL PUBLICITY”

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Abstract

In highly profile legal proceedings, when there is extensive media coverage often shapes public perception, also influencing the judicial process itself. This phenomenon, known as a "media trial," occurs when the media presents narratives that may sway public opinion about an individual's guilt or innocence before the court delivers its verdict.⁴⁰This gives Impact on Public Perception and Judicial Integrity.

Establishing clear guidelines for media interactions with law enforcement and judicial bodies is essential to prevent the detrimental effects of media trials on both public perception and the administration of justice.⁴¹ The Test Identification is a procedure used in criminal investigations when a witness identifies the accused from a line-up, is one of the main areas where media intervention can be harmful. The witness must not have previously seen the accused in order for TIP to be considered trustworthy. However, the witness's memory may be influenced if the accused's face is constantly displayed on TV and social media. This issue, which is referred to as the "reverse influence" problem, occurs when the media distorts or even alters what a witness thinks they saw, undermining the veracity of their account. This study examines the potential effects of media publicity on trial fairness, specifically with regard to TIP and other early stages of an investigation. The research also examines possible reforms that could ensure the integrity of the legal system and freedom of journalism, including improved media and law enforcement training, legislative safeguards like gag orders, and anonymizing the accused before TIP.

Key Words – Prejudicial publicity, Contaminated identification, Trial by media, Presumption of guilt vs. innocence, public shaming and social media justice.



⁴⁰ Nariman, Fali S., "Are Impediments to Free Expression in the Interest of Justice," *CJL Yearbook*, Vol 4, 1995

⁴¹ "Media Trial And Its Impact on Evidence" accessed September 28, 2022

1. Introduction

1.1 Background of TIP and its evidentiary role

A Test Identification Parade (TIP) is a procedural tool utilized during criminal investigations to assess the reliability of a witness's identification of a suspect. While TIPs are integral to the investigative process. However, their role as direct evidence in judicial proceedings is limited, serving primarily as corroborative support to other evidence presented in court. Establishing clear guidelines for the conduct and use of TIPs is essential to uphold the integrity of the judicial process and protect the rights of the accused. The evidentiary role of TIP is significant because it serves as a form of corroborative evidence in a criminal trial. TIP provides proof of the suspect's identity in relation to the crime. When a witness identifies the accused during a TIP, it helps establish that the individual involved in the crime is indeed the person being accused. However, TIP is not always definitive proof of the accused's involvement in the crime and must be evaluated in conjunction with other forms of evidence, such as forensic reports, testimonies, and circumstantial evidence. The identification process through TIP is a valuable tool in a trial because it can help affirm or disprove the witness's testimony. However, its admissibility as evidence in court depends on the fairness and legality of the procedure. For instance, TIP results may be considered invalid if the accused was shown to the witness beforehand or if there is evidence of coercion or influence during the parade. In practice, TIP is subject to careful scrutiny in court. The defense may challenge its validity by arguing that the procedure was not conducted fairly, or that external factors, such as media coverage or prior knowledge of the accused, could have influenced the witness. As a result, the courts must evaluate TIP carefully to ensure that it does not undermine the presumption of innocence or introduce any unfair prejudice against the accused.

1.2 The rise of media trials and 24/7 news cycles

Media trials can significantly affect public opinion by disseminating selective information, thereby creating biased perceptions of the accused. For instance, in the 2008 Aarushi Talwar murder case, sensationalized media reports led to widespread speculation and public condemnation of Aarushi's parents, despite the absence of concrete evidence. This premature judgment not only tarnished their reputations but also highlighted the potential for media to influence public sentiment unjustly. In contrast, a fair trial is a legal right guaranteed under Article 21 of the Indian Constitution, which ensures justice is delivered impartially, based solely on evidence and legal procedure. While media trials rely on selective reporting, opinions, and speculation, a fair trial is based on facts, witness testimonies, and legal arguments examined by an impartial judge. For example, in the Aarushi Talwar case, the media created a public narrative that portrayed the parents as guilty, despite the absence of solid proof at the time. Similarly, in Rhea Chakraborty's case, intense media coverage led to public shaming without a court conviction. A fair trial, however, protects the presumption of innocence, meaning an accused is considered innocent until proven guilty in a court of law. It provides the accused with rights such as legal representation, cross-examination of witnesses, and the opportunity to present a defense.

The Supreme Court of India has acknowledged that media trials can "deflect the cause of justice" by influencing public opinion and potentially prejudicing judicial proceedings. In September 2023, the Court directed the Ministry of Home Affairs to develop guidelines to regulate police briefings to the media, aiming to prevent premature disclosures that could lead to media trials. While the media plays a crucial role in informing the public, it must exercise responsibility to avoid infringing on the rights of the accused and the integrity of the judicial process. The Chief Justice of India emphasized that media trials create narratives that render

individuals guilty in the public eye even before judicial proceedings conclude, thereby undermining the presumption of innocence—a cornerstone of legal jurisprudence. To address the challenges posed by media trials, the Supreme Court has called for a delicate balance between the media's right to free speech and the rights of the accused to a fair investigation and trial. The Court's directive to establish a standard operating procedure for police-media interactions reflects a concerted effort to safeguard judicial integrity and prevent the prejudicing of legal proceedings through premature media exposure. Media trials underscore the need for ethical journalism that respects the rights of individuals and upholds the justice system's sanctity. While the media serves the vital function of informing the public, it must do so without compromising the fairness of legal proceedings or the presumption of innocence.

1.3 Research question:

1.3.1 Does media exposure dilute TIP's value?

Yes, media exposure can significantly dilute the evidentiary value of a Test Identification Parade (TIP). The primary purpose of a TIP is to allow a witness or victim to identify an accused person who is not previously known to them, in a fair and unbiased manner. For this to be reliable, the accused must not have been seen by the witness before the TIP. However, in today's era of 24/7 media coverage, especially in high-profile cases, suspects' photographs and personal details are often widely circulated by the press or on social media even before the TIP is conducted.

When the accused is repeatedly shown in the media, there is a high risk that the witness's memory is influenced—consciously or subconsciously—by the images seen in news reports. This can lead to identification based on media exposure, not actual recollection from the crime scene, thereby compromising the fairness and reliability of the TIP. Indian courts have recognized this risk. In several judgments, courts have held that if a suspect is shown to

the witness before the TIP—either directly or through media—it reduces the credibility of the identification. For example, the Supreme Court has observed that identification made in court or during TIP loses significance if the accused was already seen in police custody or in the media. Therefore, to preserve the evidentiary value of TIP, it is essential that police and media refrain from publicizing the accused's identity before the process is completed. Unregulated media exposure not only dilutes the probative value of TIP but can also impact on the fair trial rights of the accused, violating the principle of presumption of innocence. In conclusion, while media has the right to report, uncontrolled and premature exposure of the accused can undermine TIP's legal integrity, making it less effective as a tool of justice.

1.3.2 Is there legal accountability for media?

Yes, there is legal accountability for the media in India, though it operates within a framework that must balance the freedom of the press with the right to a fair trial and the integrity of judicial proceedings. The media enjoys protection under Article 19(1)(a) of the Constitution, which guarantees the freedom of speech and expression. However, this right is subject to reasonable restrictions under Article 19(2) in matters concerning contempt of court, defamation, public order, and decency. In the context of media trials, when media outlets publish prejudicial content during the investigation or trial stages, it may amount to contempt of court under the Contempt of Courts Act, 1971. This includes any reporting that interferes with or tends to interfere with the administration of justice. Courts have warned against media creating narratives that can influence witnesses or affect the presumption of innocence, especially in high-profile cases.

The media is also subject to criminal laws such as defamation (Section 499 IPC / Section 354 BNS), and provisions restricting disclosure of sensitive information, such as the identity of rape victims (Section 228A IPC / Section 72 BNS). These ensure that individual rights are

protected during reporting. Furthermore, regulatory bodies like the Press Council of India (PCI) and the News Broadcasting & Digital Standards Authority (NBDSA) provide ethical guidelines and can issue warnings or seek apologies. However, their enforcement mechanisms are largely advisory, not legally binding. In recent judgments, including those in 2023, the Supreme Court emphasized the need for regulating police-media interactions and directed the Ministry of Home Affairs to draft guidelines preventing premature disclosure of case details. In conclusion, while legal accountability exists, the effectiveness of these measures depends on strict enforcement and responsible journalism to ensure the media does not compromise judicial fairness or individual rights.

1.3.3 How can we reform the law to protect TIP integrity?

To protect the integrity of Test Identification Parades (TIP), legal reforms are essential in both procedural safeguards and media regulation. The goal is to ensure that identification is fair, unbiased, and free from external influence, especially in the digital age where suspects' images are quickly circulated through media. Currently, TIP is not codified in the Bharatiya Nagarik Suraksha Sanhita, 2023 though it is governed by judicial guidelines and executive instructions. A clear statutory provision defining the procedure, rights of the accused, and role of the magistrate should be incorporated to give it formal legal standing and avoid procedural ambiguities. Courts or magistrates should be empowered to issue temporary gag orders preventing the publication of the suspect's image or personal details until after the TIP is conducted. This would help prevent media exposure from influencing the witness's memory. Clear, enforceable rules should restrict police from leaking photographs or details of the accused to the media before TIP. Non-compliance should attract penalties or contempt proceedings. Ensuring that witnesses are not influenced or exposed to media content prior to TIP is critical. Witnesses could be given

briefings about the importance of impartial identification and be kept in secure conditions when needed. Modern techniques like video-linked TIPs (under magistrate supervision) can be explored, especially when physical parades pose logistical or security challenges. Regular training on the legal significance of TIP and media ethics should be made mandatory for investigating officers.

CHAPTER 2: Legal Framework of Test Identification Parade

2.1 Need and Purpose

The need for TIP and the main purpose of TIP is that the police will get clues for better investigation so that they can decide that he is the only accused also to ascertain that the investigation is going in a right direction. It is corroborating evidence as per section 160 Bharatiya Sakshya Adhinyam, 2023. Test identification is done at the time of Investigation proceeding. It is done to be as a previous statement of accused and it is a corroborating piece of evidence. It is mentioned that the proceeding of the TIP will be conducted in front of the judicial magistrate (section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023) or executive magistrate (No provision is given) or any other private person but it cannot be done in front of the police officer. The test identification parade is a part of investigating proceeding and initiated by the investigating officer. The accused is mixed with 9 to 10 people who have the same physical structure, and the witness is required to identify the accused out of them. This identification by a witness is recorded in the form of a statement. The major purpose of the TIP is as follows.

1. To get clues about whether the investigation is moving in the right direction, and it helps in further investigation of cases.
2. TIP is created in the form of a previous statements of witness so the when the same witness does the Dock identification of the accused on oath at the trial stage, the statement of TIP can

be used for corroborating the identification in court under section 160 BSA. Normally between the incident and the trial a lot of time lapses and after such a time gap when the witness identifies the accused the defense may raise an objection regarding the reliability. The reliability of such identification to avoid such an objection the TIP conducted in front of judicial officer so that the TIP statement can be used for corroboration statements.

TIP though is initiated by the investigating officer, but TIP is not recorded in the presence of presence of police officer. The reason being that if is recorded before the police officer it will be considered to be made to the police officer in the course of the investigation and as per section 181 BNSS such statement cannot be used for any purpose. It can be used only for contradiction as dying declaration or as discovery statement to avoid the effect of 181 BNSS the police officer gets the TIP conducted before the Judicial magistrate, Executive magistrate or in front of a private person.

2.2 Section 7 Bharatiya Sakshya Adhinyam (BSA)

It explains fact in issue or relevant fact which support or rebut an inference suggested by the fact in issue or relevant fact or which identify when such identity is relevant of person of thing or which fix the time or place at which any fact in issue or relevant fact happened or which shows the relationship of the parties by whom such fact was transmitted are relevant in so far as they necessary for that purpose.

The words relate to the fact of relevancy on which we are examining and that purpose relates to the support or rebutting, explaining, or introduce, identity, relation, time and place.

Explanation:

Section 7 BSA permits the facts necessary to explain or introduce relevant facts to be admitted as evidence. Identification of the accused by a witness falls within this provision,

as it helps to establish the connection between the accused and the crime. Though TIP is not substantive evidence, it acts as corroborative evidence, lending credibility to the in-court identification of the accused by the witness. Courts have repeatedly held that the purpose of a TIP is to test the veracity of a witness's ability to identify an unknown accused. TIP is conducted at the prerogative of the investigating officer. Its corroborating value only when the TIP was conducted before the Judicial Magistrate, Executive Magistrate or in front of private person and not before the police officer. If TIP is conducted before a police officer, then that statement would be considered to be a statement made to the police in the course of investigation and it will be hit by section 181 BNSS / 162 CrPc. If the witness has identified the accused in the TIP but later on at the stage of Trial (Dock) he retracted from identifying the accused, then such retraction will not make the identification or TIP as a substantive piece of evidence rather the TIP will have no evidentiary value.

“Any fact which determines or shows the identity of thing or person”

Any fact which determines or shows the identity of a person or thing is considered relevant when it helps prove or disprove a fact in issue. Identity plays a key role in both civil and criminal cases, especially in proving the presence, role, or ownership of a person or object related to a case. The facts necessary to explain or introduce relevant facts, or which establish identity, are admissible. For instance, identification through photographs, fingerprints, handwriting, or voice are considered valid supporting evidence. Test identification parades (TIP) are also conducted to establish a suspect's identity. Such facts help the court connect the accused or any person with the incident in question. Therefore, any detail that proves the identity of a person or object becomes a crucial piece of evidence under the Indian Evidence Act to aid in fair judgment.

It is done in a case where the accused is not known by the witness from before, but the witness saw the accused committing the crime/offence and bases of his memory and facial recognition the accused is identified by the witness in the court this is called testimonial/facial identification.

DOCK IDENTIFICATION i.e. identification directly in court is a substantive piece of evidence made in the trial proceeding, and it is per se admissible as it is a relevant fact under section 7 of BSA. Regarding dock identification there is No problem at all regarding its Admissibility rather a question will raise regarding the degree of reliability of such dock identification.

2.3 Provisions of Bharatiya Nagarik Suraksha Sanhita (BNSS)

Section 54 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 deals with a situation where a person accused of a crime refuses to participate in a Test Identification Parade (TIP). The TIP is a process in which a witness is asked to identify the accused among a group of people who look similar. This helps confirm whether the accused is really the person involved in the crime. It allows the police officer leading the investigation to request the local magistrate (the official in charge of overseeing the law in the area) to order the accused person to take part in the TIP. If the accused refuses to cooperate, the magistrate has the power to order them to participate. This section ensures that the process of identifying the accused continues without any hindrance.

In the TIP process, the magistrate plays an important role. They must ensure that everything is done fairly and according to the law. The magistrate is responsible for making sure the accused is treated fairly, that no one is forced to participate, and that the identification process follows the right procedures. Essentially, they make sure the process is transparent and unbiased.

What Happens If the Accused Doesn't Cooperate?

If in any of the case, accused refuses to take part in the TIP, under Section 54 of BSA gives the court the ability to draw an adverse inference from this refusal. This means the court can make a judgment that the accused is acting in a way that suggests they might be guilty. For example, the court could see the refusal to cooperate as a sign that the accused is trying to avoid being identified, which could suggest they are guilty of the crime. This rule is important because it pushes the accused to participate in the investigation, helping the police gather important information. It also prevents the accused from blocking the investigation process by refusing to cooperate. However, it's also important that this do not immediately declare the person is guilty. The refusal to participate in the TIP is just one part of the case, and the court will still consider all the evidence before making a final decision.

The idea behind Section 54 is to encourage the accused to cooperate with the police investigation. By allowing the court to draw an adverse inference (a conclusion that is not in the accused's favor) if they refuse to participate in the TIP, the law ensures that the accused cannot easily avoid the identification process. It helps the investigation move forward and gives the police a way to continue verifying the identity of the accused. While this section ensures that the accused must cooperate with the investigation, it's also important to remember that everyone has the right to a fair trial. The law still presumes that the accused is innocent until proven guilty, so the court must look at all the evidence before making any judgment. Refusing to take part in a TIP could be seen as suspicious, but the court cannot automatically decide whether the person is guilty just because they didn't participate. It's just one factor among many that will be considered.

For the purpose of TIP can the bail be rejected.

Section 480 BNSS- This section talks about when a person who is arrested for a non-bailable offence can be granted bail by a Magistrate (a judge in a lower court).

Specially section 480(1) proviso 3 BNSS - This part of the law talks about bail – which means letting a person out of jail while their case is still going on in court. Normally, if someone is accused of a serious crime (like murder, rape, kidnapping), it's not easy to get bail. But this law gives a special chance to certain people.

Section 480(1) proviso 3 of BNSS states that if otherwise the accused is entitled to bail, then the court will not refuse to grant the bail merely on the ground that the TIP is pending. However, in actual practice the court, while granting bail, can put certain conditions for a limited period, for example, conditions for 2 or 3 days that he cannot appear in public or cannot give interview in media.

Safeguards on TIP

1. TIP should not be conducted before the police officer as mentioned in Section 181 BNSS.
2. TIP should be conducted ASAP after the arrest of the accused as a delay may cause a fading in the memory of the witness. It may also result in the winning over of the witness of the opposition. Moreover, due to the delay there may be chances that the accused may appear in the public or in the media (value of dock and TIP will get lost).
3. The police have to make sure before identification that the accused does not appear in the media or the public. Otherwise, the opposition may raise objections.
4. The investigating officer has also to ensure that at the time of investigation there should not be any special mark or tag upon the accused.

5. The accused shall be mixed with 9 to 10 other people who should be of similar built, structure, complexion, etc.
6. The investigating officer should also ensure the safety of the witness.

Maxim- *Falsus in uno, falsus in omnibus* (English maxim)

If a part of your statement is false, then the whole statement will be considered to be false. This maxim is not applicable in India. In India, if the statement is partly false and partly true then if the true part is severable then it will be admissible and it will be relied upon.

In the case of *Sheikh Simtha Madhar @Jaffer @ Smitha V. State, Represented by Inspector Of Police – 2 judges' bench- by Hon'ble Mr. Pinaki Chandra Ghosh, J.*

Generally, it is expected that the TIP of each accused shall be done separately but it is not illegal if the TIP of more than one accused is done simultaneously. It is permissible and it can be used for corroboration.

If TIP is not done and is it directly court identification (DOCK IDENTIFICATION) is done?

Yes, it can be done. A direct identification in the court without TIP is per se admissible and its admissibility is not dependent upon whether TIP was conducted or not. However, the reliability of that court identification would depend upon various factors and basically it is related to judicial wisdom of the court- whether the court considers it to be reliable or not. A question may be raised by the defense that after such a long gap the witness still remembers the accused. In that context, the court has to examine the following:

1. The distance from which the witness saw the accused.
2. The strength of the eye of the witness.
3. Whether there was sufficient light at that time or not.
4. Whether the witness saw the accused for sufficient time duration or not.

5. Whether there were some peculiar features about the accused or not.

CHAPTER 3: Media's Role in Criminal Investigations

Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression to all citizens. Although the Constitution does not specifically mention "freedom of the press," the Supreme Court has clarified in cases like *Printers (Mysore) Ltd. vs. Asst. Commercial Tax Officer* that freedom of the press is included within this right. The press is often called the "fourth head of democracy" because it plays a vital role in informing the public and holding the powerful accountable. However, no right, including the freedom of the press, is absolute. In a democratic and civilized society, rights come with reasonable restrictions. If the media goes too far—especially by giving too much exposure to criminal cases—it can interfere with the judicial process, affecting not only the accused, but also the victims and witnesses.⁴² So, while press freedom is essential, it must be balanced with the need for a fair trial and judicial neutrality.

3.1 Fair Trial

A fair trial means that a person is judged in a courtroom by a judge who is unbiased and neutral. The way a trial is conducted must follow proper legal rules, like those given in the Code of Criminal Procedure, 1973. In India, even if someone is found guilty of a crime, they still have the right to life and personal freedom. This is protected under Article 21 of the Constitution, which says that every person has the right to a fair and just legal process. The Supreme Court of India has clearly said that a fair trial is a basic human right, and without it, justice cannot be delivered. It's not just about being innocent or guilty about making sure the process is fair for everyone involved. The media often covers criminal cases, especially high-profile ones, in great detail. Sometimes, this becomes a problem. When the media starts giving its own

opinion about who is guilty or innocent, even before the court decides, it is called a "media trial." In many cases, the public starts believing the media's version of the case as the final truth. Then, if the court gives a different judgment, people might wrongly think that the judge is corrupt or biased. That's why media trials are considered harmful to real justice. The Supreme Court has said clearly that the media should not run its own investigation or publish details while a court trial is going on. Doing so can interfere with justice—whether it favors the accused or the prosecution. The court warned that newspapers and TV channels must not act like courts themselves, especially during an active trial.⁴³

3.2 Right to Be Represented – And How Media Trials Can Harm It

One of the most basic rights a person has during a criminal case is the right to be represented by a lawyer. This is a key part of having a fair trial. But when the media starts running its own "trial", this right can be seriously affected.

Example of Ajmal Kasab, the main accused in the 26/11 Mumbai attacks. Now, it was very clear to the whole country that he committed the crime. But even he had the legal right to a proper defense, because our justice system says every person deserves a fair trial – no matter what they've done. Kasab's lawyer, Abbas Kazmi, later spoke about how much pressure and hate he received from the media and even the public prosecutor just for doing his job. He was called a "terrorist lawyer", and people started to treat him like he was part of the crime – just because he was defending Kasab in court. Even worse, some of this hatred was based on the fact that he and Kasab belonged to the same religion, which is unfair and dangerous. This shows how media trials can scare lawyers away from defending certain clients, even if that client is legally entitled to a defense. If people can't find a lawyer because of

⁴² Akash Kamal Mishra, Media laws in India: A brief observation, Notion Press (2020)

⁴³ Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr 1961 AIR 633, 1961 SCR (3) 460

media pressure, they lose their right to a fair trial. The Supreme Court⁴⁴ of India has clearly said that the freedom of the press is extremely important in a democracy. In fact, it called press freedom “the mother of all liberties”, because people have the right to speak freely and share information. In the case of *Secretary, Ministry of I&B vs. Cricket Association of Bengal*⁴⁵, the Court said that the right to give and receive information is a part of the freedom of speech under Article 19(1)(a).

So yes, the media has the right to inform people, and the public has the right to know. But this doesn't mean the media should start making up stories or sensationalizing things just to get more views. That kind of reporting can damage people's lives, influence court decisions, and mess with the justice system.

Aarushi Talwar case

The Noida Double Murder Case involved the tragic deaths of 14-year-old Aarushi Talwar and 45-year-old Hemraj Banjade in May 2008. The case received massive media attention, but much of the coverage was highly irresponsible. Without any court verdict, several news outlets portrayed Aarushi's father, Dr. Rajesh Talwar, as the killer and even suggested disturbing theories like an affair between Aarushi and Hemraj or claims about her parents' involvement in wife-swapping—all of which damaged the reputation of a young girl who had already died, her family, and others involved. This kind of “trial by the media” created public bias and could have affected the court's decision⁴⁶. A lawyer named Dr. Surat Singh was so disturbed by this type of media reporting that he filed a PIL (Public Interest Litigation) asking the court to stop the media from such reckless coverage. Later, in 2010, Aarushi's father, Rajesh Talwar, also approached the court. He asked for judicial help against media reports that were damaging his and his family's

image, without any legal proof⁴⁷. Even the Supreme Court expressed serious concern, warning all media houses—both TV and digital—to be more responsible. The Court said that such reporting can hurt the defence of the accused and destroy the dignity of people involved in the case.

The Aarushi Talwar case shows how irresponsible media coverage can harm real people, influence public opinion, and even interfere with justice. Media trials not only hurt the reputation of the accused and victims but also threaten the basic right to a fair trial. In cases like this, the court's message is clear: Media must inform, not sensationalize.

Tarun Tejpal Sexual Assault Case

The Tarun Tejpal case was about a female journalist who said her boss, Tarun Tejpal, tried to sexually assault her in a hotel lift during a work event in Goa. Because it was a sensitive and serious case, the court said the trial should happen privately, behind closed doors, so that both the woman and Tejpal's privacy and dignity could be protected.

According to Indian law (Section 327 of CrPC), rape cases must stay private, and no one is allowed to show or share anything about the case in public unless the court gives permission. But in 2018, a big news channel broke this rule by showing CCTV footage related to the case on TV. They didn't ask the court for permission and still aired the video⁴⁸.

Many people were upset. Legal experts said this was illegal and unfair. Even though the channel later removed the video from its website, it had already done damage—people had seen it, it hurt the reputation of both the woman and Tejpal, and it could have affected the court's judgment.

⁴⁴ Harijai Singh & Anr vs In Re: Vijay Kumar on 17 September, 1996

⁴⁵ 1995 AIR 1236, 1995 SCC (2) 161

⁴⁶ A.G. v. Times Newspaper, (1973) 3 All ER 54; Express Publications (Madurai) Ltd. v. Union of India, AIR 2004 SC 1950,

⁴⁷ Kartongen Kemi Och Forvaltning AB v. State through CBI, 2004 (72) DRJ 693.

⁴⁸ Shoma Chaudhury, “Arushi Talwar murder case verdict is a chance for cops, courts and media to say: never again”, <https://www.dailyo.in/politics/aarushi-talwar-murder-case-rajeshnupur-talwarhemrajnjustice-media-trials/story/1/20055.html>.

3.3 Public opinion vs. presumption of innocence.

In simple words, the idea that a person is innocent until proven guilty is a very important part of our legal system. Even though the Bharatiya Sakshya Adhinyam, 2023 doesn't use the exact words "presumption of innocence," it supports this idea in its rules. For example, Section 104 BSA says that if someone wants the court to believe something, they have to prove it. This means the responsibility to prove the crime is in the police or prosecution, not the person who is accused. Section 105BSA also says that if no one gives any evidence, the person who would lose the case is the one who needed to prove their point. Section 105 says that if an accused person wants to say they acted in self-defense or had a special reason for their actions, then they need to prove that part themselves. In the same way, the Bharatiya Nagarika Suraksha Sanihita, 2023 also follows the idea that every person is innocent unless the court finds them guilty. For example, Section 250 of the BNSS allows a judge to let the accused go free if there's not enough evidence. Section 351 gives the accused a chance to explain their side when evidence is shown against them. So overall, these laws make sure that no one is treated like a criminal until the court proves it through a fair trial.

In the case of Satendra Kumar Antil vs. Central Bureau of Investigation (2022),

- **2 Judges bench – M.M Mundresh, J**

In criminal jurisprudence, a person is presumed to be innocent unless proven guilty. The burden of proof is on the prosecution to keep him in custody and bail shall not be granted on such grounds and court will always be tilted towards innocence of accused.

The general rule is that the accused is presumed to be innocent unless proven guilty and hence the general tilt of the court will be releasing the accused on bail unless the grounds of custody are clearly mentioned. Bail is the rule and jail is the exception. Whenever a

bail application is filed the general tilt of the court will be grant bail and the burden of proving the factors of not granting the bail will lie upon the prosecution.

"Ei incumbit probatio qui dicit, non qui negat"
The burden of proof lies on the one who affirms, not on the one who denies.

In the hearing on bail in the cases of non-bailable offences the balance between individual interest of the accused in his life, personal liability and dignity under Art.21 on the one hand and societal interest in keeping the accused in custody on the other hand as a crime is considered to be a wrong against the society.

Constitutional morality - There are some basic values in the constitution which cannot be breached. These are implicit in the Constitution and cannot be breached. They include values such as socialism, secularism, liberty, dignity, and protection of life of an individual. These are basic values which shall not be violated under any such circumstance. The reasons for arrest and prosecution should be supported by very strong evidence, and those reasons have to be proved in court. Guilty, justice, reasonableness, fairness, good conscience, socialism, secularism, integrity, dignity, life, and personal liberty—these are all dimensions of fundamental values of the Constitution which can't be violated in any circumstance. However, in exceptional interest, some of them can be derogated (limited or restricted).

CHAPTER 4: Impact of Media Exposure on TIP

People get particularly interested when a significant or contentious case occurs, such as a murder, the death of a celebrity, or any other delicate crime. Who did it? They want to know everything. What evidence is there? What will take place next? TV news outlets, newspapers, and websites begin to cover the case in-depth to pique this interest, often even before the police or court have completed their work.

The issue is that, in an attempt to make the story more engaging, the media frequently

inserts their own thoughts, conjectures, or dramatic turns. People may be misled by this. Even before the court has spoken, a lot of viewers or readers form opinions about someone's guilt or innocence based only on what they saw on the news. The case may be significantly impacted by this type of coverage. It has the power to sway witnesses, exert pressure on the police, and even change the judge's opinion. Media trials had a significant impact on a number of well-known Indian cases, including the murder of Jessica Lal, the Aarushi Talwar case, and the killing of Sushant Singh Rajput. Without waiting for the court to reveal the truth, many had already formed their opinions based solely on news reports. Some claim that freedom of speech and the press give the media the right to cover such events. Indeed, the media is crucial in bringing attention to problems and raising awareness. However, there is a limit. It becomes problematic when the media goes too far and begins to act as the court.

4.1 Evidentiary Aspect

Whether the claim being verified is the existence of a specific component, the occurrence of a particular event, or both, there must be some sort of "proof" to support its veracity. Validation. The set of guidelines that govern the gathering of factual evidence in all court proceedings is known as the law of evidence. These guidelines will help the trier decide which evidence to take into account and which to ignore when rendering a decision. This individual is frequently referred to as the case's judge. Additionally, the use of this set of guidelines aids in the process of establishing the nature and extent of the evidence that may be presented in court.

4.2 Indian Judiciary and Media Influence

Media plays a big role in shaping public opinion, and sometimes, this even affects judges. Ideally, courts should only go by evidence. But in some big cases, the media creates such a strong narrative that it seems to affect the legal process.

Take the Aarushi-Hemraj murder case. Aarushi, a teenager, was found dead in her room. The next day, their house help, Hemraj, was found dead on the terrace. The media took over the story and made it a national obsession. Even though there were no eyewitnesses and a lot of gaps in the investigation, people felt like they already knew what happened – thanks to the news reports. The CBI said Aarushi's father killed her and Hemraj after seeing them in a compromising position, and that he cleaned up the crime scene with his wife's help. But this version didn't really hold up – Hemraj's blood wasn't found in Aarushi's room, and there were no signs of forced entry. Still, the media narrative was so strong that many people had already decided the parents were guilty, before the court did. The Supreme Court later said it had fairly looked at all evidence and wasn't influenced by media coverage. But it's still debated how much the media's role shaped public opinion – and maybe even the outcome.

Another case was the Jessica Lal murder. Jessica was shot at a fancy party by a politician's son after she refused to serve him a drink. At first, he fired into the air to scare her, but then shot her in the head. The case would have gone cold, but the media dug into it, exposed bribes and pressure from powerful people, and got the public involved.

Conclusion

High-profile cases like the murders of Jessica Lal and Nitish Katara have shown how extensive media coverage can influence public opinion and even impact the outcomes of trials. In Nitish Katara's case, media attention played a role in supporting the victim's mother's fight for justice. While media can raise awareness, there is a risk when the press begins to act as judge and jury – especially before a court has ruled on someone's guilt. This undermines the principle that every accused person is presumed innocent until proven guilty, a fundamental concept in criminal law.

The challenge lies in balancing the freedom of the press with the right to a fair trial – both of

which are protected under the Indian Constitution (Articles 14, 19, and 21), often referred to as the “golden triangle” of rights. William Blackstone once noted that while press freedom is vital to a free society, those who abuse it by publishing harmful or false content must face the consequences.

International human rights frameworks also recognize that freedom of speech is not absolute. For instance, Article 19 of the ICCPR and Article 10(2) of the ECHR allow restrictions on expression to protect the rights of others, national security, public order, and judicial integrity. Nepal’s Interim Constitution also permits reasonable restrictions to protect sovereignty, public morality, and harmony among communities.

The key takeaway is that media freedom and fair trial rights must coexist. While the media has a crucial role in informing the public, it should not interfere with the legal process. Responsible reporting and legal accountability are essential to maintain both public trust and judicial fairness. Freedom of expression is a fundamental right, recognized both internationally and in national constitutions. However, it is not an absolute right, and reasonable restrictions can be imposed—especially when it comes to protecting the reputation and rights of others.

Defamation laws—which vary from country to country—are the most common legal tools used to protect a person’s reputation. While these laws serve a legitimate purpose, they are often misused by public officials and authorities to suppress criticism and hinder press freedom. The European Court of Human Rights and the United States Supreme Court have made it clear: public officials should be held to a higher standard of tolerance, especially in cases involving public interest. This ensures that open debate and democratic discourse are not silenced.

Many countries, including France, Ghana, Sri Lanka, and the UK, have decriminalized defamation, replacing jail time with civil

remedies. This shift reflects growing global support for protecting journalistic freedom and preventing the chilling effect that criminal sanctions can have on media reporting. However, civil defamation laws still require careful handling to ensure fair balance—such as proper burden of proof, recognizing truth as a defense, and understanding the difference between facts and opinions.

In India, investigative journalism has played a vital role in exposing injustices and reviving public interest in cases like the Jessica Lal and Nitish Katara murders. These cases show how the media can uncover corruption, press for justice, and bring about accountability—especially when powerful individuals are involved.

However, this power must be used responsibly. While the media serves as a watchdog in democracy, its influence should never prejudice an ongoing trial or compromise the rights of the accused. A fair trial must remain free from external pressure, and freedom of expression must be balanced with the right to reputation and judicial integrity.

In conclusion, a free and responsible press is vital for a healthy democracy. When used ethically, media can empower the public, uphold justice, and drive positive societal change—without undermining the core principles of a fair legal system.

Media pressure has been shown to be effective in preventing cases from proceeding to a full trial. The two homicide cases cited above are only two examples of how responsive and ethical media have helped citizens assert their rights. In a democratic society, the media has an obligation to remain impartial and to provide a check on the government. The importance of media coverage is shown in both examples. To a large extent, the media is responsible for the increased interest in these matters in the courts. Press attention has helped speed up the process of several pending trials. Both cases illustrate the double standard in the Indian justice system and the ability of the wealthy

and influential to avoid consequences for their wrongdoing. These two examples highlight the power of the media to sway public opinion and ensure equal treatment. Both examples show the power and responsibility of the media in a democracy, making clear the need for investigative journalism. Both cases received widespread media attention and included influential people who seemed to escape unhurt at first. In both instances, the media's reporting on the truth was a major factor in the reopening of the investigations. Those who had been wrongfully acquitted were finally punished by being put to prison. As a result, the intervention of the media helped reveal the hidden truths, enlightening the judges about the many flaws and corrupt practises of the Indian administrative system.

To properly reflect the value of open debate on matters of public importance, defamation laws should follow the principle established by international jurisprudence: that public authorities, officials, and public figures must tolerate a greater level of criticism than private individuals.

Moreover, if a public official or authority figure is criticized in the course of performing their official duties, they should not be allowed to file a defamation suit. This would prevent authorities from misusing defamation laws to silence fair and accurate criticism of their actions.

It is also well-established in international jurisprudence that institutions do not possess personal reputations. Therefore, any law that grants special protection to public figures or state bodies should be repealed. No defamation suit should be permitted to protect the reputation of a government institution or organ of the state, as these bodies already have sufficient platforms and resources to respond publicly to criticism.

Another area in need of reform—particularly in emerging democracies—is the legal burden of proof in defamation cases. The U.S. Supreme Court has rightly observed that laws placing the

burden on the defendant can deter individuals from speaking out, even when they believe their claims are true. This has a chilling effect on freedom of speech.

In several countries, defamation remains a criminal offence. While these laws are rarely enforced, they still exist and act as a looming threat, especially for journalists and media outlets. The mere presence of these laws often leads to self-censorship, as media professionals fear legal consequences. For this reason, there is a strong case for the complete repeal of criminal defamation laws.

Both the United States Supreme Court and the European Court of Human Rights have held that truth should be a valid defence in criminal defamation cases. Therefore, it is recommended that truth be considered an absolute defence in all criminal defamation proceedings. If the allegedly defamatory statement can be proven true, then any claim of harm to reputation should be dismissed.

Furthermore, the laws regarding civil damages in defamation cases also need reform. Without a standard or limit on compensation, simply replacing criminal penalties with civil ones does not ensure the protection of free speech. In many Asian countries, courts have awarded extremely high damages in defamation cases, which discourages open expression. According to rulings by the European Court of Human Rights, monetary compensation in defamation cases should be proportionate to the actual harm caused to a person's reputation.