**Social Media Trials**

By

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**Abstract**

The paper discusses social media trials and its effects, mainly focussing on the Indian Judiciary.

The key elements of this paper would be : the legality of social media trials in India, the Indian Judiciary’s response and comments on such matters, similar issues faced in foreign countries, and finally, a comment on the vulnerability of witnesses and the accused as well as regulation of ‘free’ social media.

Keywords : social media, fair trial, contempt of court

**Introduction**

“Enter RUMOUR, painted full of tongues."[[1]](#footnote-1)

Named after the degrees of separation, in 1997, SixDegrees.com became the first social networking site on the web. The rest is as we know it. Gorging information as it pops, social media (and the internet)’s is a screen that we can’t take our eyes away from. Trial by social media is, therefore, a relatively modern offshoot to the age-old tree that is the court of public opinion.

**What is meant by social media trial?**

The introduction of social media has diluted the concept of the Four Estates, introducing a Fifth which holds sway as much as, if not more, than the Fourth. The attractive part about social media is clear : it is literally the public’s opinion, it’s not curated. With rampant public scrutiny, the sturdily opinionated are also present, ready to point fingers, which gives rise to the term ‘social media trial’. It is often a robust push to the judiciary to fasten proceedings and more often, a pressure on the judiciary, taking away fair trials and public shaming of the accused who is yet to be proven guilty. Add the media (press) to this mix and a volatile solution erupts. It has created a divisive, tribalistic movement, often creating echo chambers and rise of misdirected public outrage.

To both the press and the public, social media is open, and as such it has allowed free reporting, better critiques to contribute to public understanding of law, and to a better comprehension of the entire justice system. It has improved the quality of our judicial and administrative process by subjecting it to larger exposure and public accountability. However, the relationship between the judiciary and social media is more than a bit frayed. U.S. Supreme Court has already stated that social media has the dangerous potential to impact trials, holding in the landmark case of Dr. Samuel H.Sheppard[[2]](#footnote-2), that prejudicial publicity had denied the accused a fair trial. Similarly, in the U.K., in the case of Attorney General vs. British–Broadcasting Corporation[[3]](#footnote-3), it was notably stated that media trials very much affect judges. The 1994 Madrid laws on media trial, if a bit outdated for social media, do give us a general sniff of the principles that the jurists had in the oven : a distrustful allowance of media in courts, on the condition that they should only print complete facts.

What we must consider are the ones affected by social media trials : the judiciary and the parties to the case - mostly, the accused.

**Literature Review**

The recency of the concept of Social Media Trials has created a void of scholarly research on the matter. Research on media trials is readily available but the same cannot be said of social media trials. To shortly summarise, the vast literature on media trials however, as they are relevant to our discussion :

The main question that arises is a need to determine whether the motivation of the court systems in limiting media freedom is related to how they perceive the media to be impacting criminal justice systems. [[4]](#footnote-4)

It was, however, also a popular notion in most papers that the media should neither usurp the functions of the judiciary nor engage in subjective, biased reporting of formal criminal justice proceedings[[5]](#footnote-5). Also, admitted was the fact that the media distorts information relating to the proceedings[[6]](#footnote-6).

The research gap that was found however, mostly related to social media trial in general, its effect on the Indian court system specifically as opposed to jury-based-trials and a lack of discussion on maintaining witness and accused identity to protect them from harrassment and discrimination.

# **Judiciary and Social Media**

“You have to remember one thing about the will of the people: it wasn't that long ago that we were swept away by the Macarena.”

― Jon Stewart

Social media, (with it, the press and influential personalities) is very quick to pile guilt, and the sway it holds can oftentimes be devastating to an accused who has not been proven guilty. Not just that, it adds unnecessary pressure on judicial officers. This out-of-court-trial readily interprets facts in any light it prefers and adjudicates without the actual judiciary doing the same. To perform the role of the court and form opinions on such trials is baseless and harmful.

**Landmark Cases and Media**

In In Re: PC Sen[[7]](#footnote-7), the Supreme Court astutely held that the effect of the publication on justice should be given precedence over the intention of the publication. Other than the tarnished reputation of the so-called wrong doer, even the witnesses are subject to harassment. If the identity of either parties or any witnesses is revealed, it is incredibly problematic. In the case of State of Maharashtra v. Rajendra Jawanmal Gandhi[[8]](#footnote-8), the Supreme Court stated that a social media trial goes against the rule of law and can result in miscarriage of justice.

Having said that, the media has played a positive role as well. In Santosh Kumar Singh v. State[[9]](#footnote-9), the High Court retried the case and sentenced the accused to death after pressure from the public when the Trial Court had acquitted the accused. In Sidhartha Vashisht @ Manu Sharma vs State[[10]](#footnote-10), where the accused had been previously released, a social media campaign led to facts relevant to the case being revealed and the accused was appropriately sentenced.

The Supreme Court in Sahara India Real Estate Corp. v. SEBI[[11]](#footnote-11), when asked to frame rules for media in sub judice matters pointed out the delicate balance between the right to a fair trial and the freedom of expression, and thus, chose postponement orders as a solution. The need for unique solutions to compromise neither aforementioned rights was noted.

**Contempt of court**

Such trials in social media are yet to be properly regulated but certain trials in media can be stopped by the judiciary under the Contempt of Courts Act, 1971. Sec. 3 of the Act comes in especially handy. There have been cases that deal with both Art. 19(2) and the Contempt of Courts Act. Smt. Archana Guha v. Sri Ranjit Guha[[12]](#footnote-12) brought forth the important point that a contempt of court cannot be filed merely because a particular judgement had been misconstrued in the media. No freedom of media is curbed by imposing restrictions in the form of the Act. Although these sections define contempt, they remain rather vague in their definitions which gives a lot of arbitrary power to the judges to decide how and when contempt of court proceedings may be initiated. For example, Sec. 4 and 5 use the term ‘fair’ which remains undefined. What proves problematic is the fact that the judges are allowed to decide as to what matters are contemptuous and what are not. Such interpretation of the matter has been allowed under the Constitution to be in the inherent jurisdiction of the Judiciary and this jurisdiction actually brings its own set of problems. The lack of a standard when it comes to deciding what would be contemptuous allows the Judges to call for contempt without warrant.

Both TV and print media have been considered to be in contempt of court and it is a matter of time before social media can be held in the same category. It has however been held that[[13]](#footnote-13) only if the content so published affects the public opinion of the judiciary can contempt proceedings be initiated.

**Commentary on Media Trial by Courts**

In a rather long Twitter chain posted by Bar and Bench[[14]](#footnote-14), Justice G.S. Patel stated : “You cannot pluck them out of context, nor can you see them in isolation, and you have to understand that a statement here, an answer there, a question in trial does not determine it (the case).” He was talking about the media’s ability to misinterpret and blow statements out of proportion as well as the tendency to pick up isolated terms and create a twisted perspective.

It has, however, already been held in the case of Brij Bhushan v. State of Delhi[[15]](#footnote-15), that under Art.19(1)(a) the freedom of press print and electronic media is protected. Further, as in the case of LIC v. Manubbai Shah[[16]](#footnote-16), the Supreme Court clearly worded out that the freedom of speech and expression is to be construed in a manner that it includes the freedom to circulate personal views through writing, orally or AV media.

In Sahara India Real Estate Corpn. Ltd. v. SEBI, the Supreme Court discussed postponement orders with the motive of ensuring a fair trial. It was also highlighted that even fair reporting can put other connected trials at substantial risk. These orders can be used as a useful tool when balancing freedom of media whilst also looking after the accused’s rights to a fair trial - safeguarding the sanctity of judicial process.

**What about Judicial Officers on Social Media?**

India has not had significant cases of judicial officers discussing court cases on social media but the same cannot be said for all countries, especially which depend upon jury based trials.

Again, Justice G.S. Patel put it eloquently, “What is the reason why we don't have jury trials?... It was the media frenzy and the public reportage in a single criminal trial, the Nanavati murder trial, that caused the law commission to advocate a major change in criminal procedure.In the face of the starkest evidence, we wound up with a jury that was literally swayed by what it was reading and what the public was saying.”

In foreign countries, everyday use of channels like Twitter and Facebook are presenting challenges to a fair trial, with jury members announcing details of the case at random. The report, Juries and Social Media[[17]](#footnote-17), summarises the fundamental principles at stake: “Traditionally, courts have sought to balance a number of potentially conflicting rights and principles when governing trials. Social media use by jurors can damage the capacity of courts to maintain an appropriate balance between these rights and principles.”

“In 2010, Reuters Legal identified at least 90 verdicts between 1999 and 2010 were challenged due to juror Internet misconduct. They counted 21 retrials or overturned verdicts in the 2009-2010 period. The Law Commission identified at least 18 appeals in the UK since 2005 related to juror misconduct during criminal trials, some of which involved Internet access or social media use.”[[18]](#footnote-18)

In other reported cases, jurors have researched the accused on the Internet, spawning the term ‘Trial by Google’.

**Comment**

**What is free speech?**

“Public opinion is the worst of all opinions.”

― Chamfort

Ultimately, it comes down to basic definitions. The first of them : free speech. As stated earlier, The Freedom of Speech and Expression is a fundamental right guaranteed to all of our citizens under the Constitution of India. However, the Constitution does not guarantee an absolute individual right to freedom of expression, it also envisages the restrictions that could be placed on such a right to counterbalance it. Free speech including talk on social media is a fundamentally essential right but only to a certain degree. This right should not be abused to influence the decision of a trial or to spread slander against the accused. But the Supreme Court has already stated that pre-censorship of any publication would lead to infringement of this fundamental right, so there is no possible way to draw a restrictive line against such actions. It is heavily reliant on the good faith of the public, which is increasingly being lost to the Bandwagon effect.

The Indian Law Commission’s recent report entitled Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971) has made recommendations to deal with the damaging effect of sensationalised news reports on the administration of justice. Unbridled sensationalism of trials has led to the public misconstruing facts and rousing them to come out with pitchforks. A bandwagon effect is created.

Justice G.S. Patel said pertinently : “That's a mob decision. That's not a republic. That's not a rule of law.” On the matter of the pressure faced by the judges, he said : “Most judges do withstand (the pressure) but there are judges up and down the line, including in the initial courts or courts of first instance, and this pressure (of "what will the public think") is unfair. No judge should have to decide matters in circumstances like this. It is an absurd way to operate. And I don't see any reason why journalists should be allowed to gain public support.”

**What about the accused?**

In the midst of this, what is found to be most lacking are guidelines to protect the identity of the accused particularly (along with witnesses). As Article 20(3) of the Constitution of India allows, “innocent until proven guilty”, the fact is that the public do not wait for an official judgement before passing their own, harassing and discriminating against the accused without any evidence of his crime. An example of such would be Sarvjeet Singh who had been the accused in a sexual harrasment case lodged by Jasleen Kaur. The case was sensationalised in the media, he was fired from his job and generally prejudiced against until 2019, 4 years later, when he was acquitted and found innocent of all charges. The accused, such as in this scenario, suffers loss and harm due to no fault of their own and does not have a viable way to seek restitution.

**Is there regulation of ‘free’ social media?**

In the present circumstances, it is clear that freedom of speech through even social media is a fundamental right, but with said right arises a need to regulate it. It is a heavyweight balancing task, however, since any infringement of the fundamental right would cause massive public uproar.

Section 66A of the Information Technology Act, 2000 inserted vide Information Technology (Amendment) Act, 2008 provides punishment for sending offensive messages through communication service, etc. and states that any person who uses a computer or electronic device to send information which is offensive, with menacing character or known to be false but spread for the purpose of causing hatred or ill will, will be punishable with imprisonment by upto 3 years.

More recently, at a press conference, Electronics and IT Minister Ravi Shankar Prasad introduced The Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021, calling it a “soft-touch oversight” mechanism to deal with issues such as persistent spread of fake news. Software Freedom Law Centre, India (SFLC.in), however, has said that the Rules could undermine the principles of open and accessible Internet, the fundamental right of privacy and freedom of speech and expression enshrined in the Constitution.

Both of these rules could be used to regulate social media, especially in cases of discussion relating to ongoing cases but as of now, there is no clear route which has been established. It has even been discussed whether social media platforms themselves should be forced to self-regulate.

**In conclusion, what’s the way ahead?**

Social media is a way of modern life, but its impact on the ideal of a fair trial is still being measured, and approaches mitigating its impact on trials are still being considered. What can be clearly understood is a feeling of distrust of the judiciary by the public. To create an environment, where the judiciary does not need violent nudges from the public to avoid missteps and at the same time, the public can trust the judiciary to work forward and towards the goal of justice is the ultimate aim. For such a delicate scenario, the law must be simplified for the layman without diluting it. The judiciary should be viewed as a glass chamber of transparency and truth, and for that, intermediary media which might propagate half or mis-truths must be avoided. A live conference of the trial or a summarised note written by law reporting journals such as LiveLaw or Bar and Bench is a good third-party cure. False information must be cracked down upon and rules must be created for the accused’s livelihood and identity protection, to maintain the maxim of “innocent until proven guilty.” The judiciary’s work can often appear complicated and mysterious to the public (and oftentimes, extremely slow). Educating the public about their legal rights and judicial process is the only way to counteract the ever-sweet Hamletian call of jumping on the bandwagon. One thing is clear: the ready access of online information, the widespread use of social media and the bandwagon effect that comes with it present a major challenge to the concept of fair trials in the 21st Century.

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