

## **INTERROGATING STRUCTURAL VISIBLE INAUDIBILITY ON INDIAN TELEVISION: WOMEN AND “TRIAL BY MEDIA” VS WOMEN IN “TRIAL BY MEDIA”**

**Prakriti Sarkar**

*Ph.D. Scholar, School of Media, Communication & Culture, Jadavpur University.*

*Email: [prakriti.sarkar1@gmail.com](mailto:prakriti.sarkar1@gmail.com)*

---

### **Abstract**

A democratic infrastructure is governed by a “rule of law”, that is relentlessly required to be safeguarded and appropriated by the judiciary and the press. However, a major point of contention arises when media enters a disputed territory with the judiciary through their constant scrutiny that readily transitioned a judicial trial into media trial. The existence of scrutiny inside structured news reports and television news debates further draws me to focus towards a loop and media appropriated language. In many cases media are so rigid in focussing on women as a dependent agent and the crime as an independent agent that the visibility and audibility of women is shrunken inside the mediated algorithm. The way media is discussing women and indulging in silencing their voices, has further raised a pivotal question, “Is it Women and Media Trial”? or “Women in Media Trial”? The purpose of the article is to interrogate the politics of visible inaudibility of women in media trials by analysing select judicial cases particularly involving women.

**Keywords:** Women, Media Trial, Fair Trial, Trial, Judicial, Visible Inaudibility.

► *Corresponding Author: Prakriti Sarkar*

---

Freedom of the Press is almost universally measured as a designated standard for maintaining and exercising democratic governance that is governed by the “rule of law”. Within a unified democratic structure, press and judiciary work as independent institutions to demonstrate their position and accountability towards the publics. Henceforth, the judiciary and media play a significant role in fostering language appropriate for a functioning democracy. According to Dicey, ‘Rule of Law’ can be clearly interpreted from three different perspectives. Firstly, supremacy or predominance of the law of the land without any influence of arbitrary, discretionary power from the government. This further leads towards the second interpretation, equality before the law. By the term ‘equality before the law’, it states that every individual is equally subjected to the law of the land administered by the law courts, jurisdictions and ordinary tribunals without any form of disobedience. It excludes any form of official disobedience from government officials or others that are also governed by the law of the land. And lastly, ‘rule of law’ is considered not only the source but the consequence of the rights of individuals, as defined and enforced by the Courts and Parliament (Dicey 1885, 110-121). Media being an indispensable part of democratic governance is subjected to be governed by the ‘rule of law’. However, a contested area seems to emerge when media enters a disputed territory of legal jurisdiction through their constant coverage. Thus, leading towards undivided public attention and interest. This new area not only managed to

get several public attentions but also managed to put the media in the crosshair with the judicial system leading to coining a new term, '*Popular Trial*' or '*Trial by Media*' or '*Media Trial*'.

According to Robert P. Burns, trial in its own individual way actualises the '*Rule of Law*' to the situations whenever there is a rise of disputable facts (Burns, 2007). Moreover, Burns made an observation that “trial allows for a fairer tension between the instrumental or bureaucratic function of legal rules and the aspiration to justice in particular cases and, paradoxically, achieves a higher level of lawfulness. To say that the trial may be “vanishing” implies a loss of lawfulness” (Burns, 2007, p. 308). However, when a 'Trial' crosses the judicial premise and becomes a part of media events through their constant coverage then one can witness a chain of parallel trials. This comprehensive media treatment of the event thus moniker as '*Trial by Media*'. Robert Hariman (1990) stated that popular trials should be included and recognised as a new genre of public discourses. In defining popular trial, he stated that, “a popular trial is a judicial proceeding that gains the attention of a general audience, usually through sustained coverage by the mass media” (Hariman, 1990, p. 2).

A widespread media coverage of sub judicial cases not only raised contention between media and judiciary, but suggested more applicable approach to counter media freedom and its contested territory with the judicial independence. There is a stretchable fine line between media's right to report and judiciary's right to protect its citizens. But the contemporary competitive market economy has forced the media to manufacture events into media events through their deliberate and continuous coverage. According to Resta “Media scrutiny of criminal proceedings is everywhere considered essential to democracy. Yet a criminal trial, with all its rituals, taboos, and symbols, easily turns into a spectacle, which has entertainment value and therefore gives newspapers and broadcasters strong commercial incentives to cover it” (Resta, 2008, p. 33). Thus, the existence of scrutiny inside structured news reports and television news debates further draws me to focus towards a loop that exists in understanding the politics of structural visible inaudibility of women's voices. According to Ammu Joseph and Kalpana Sharma in their essay '*Whose News and Who is News*' made a critical observation that women are no longer missing from the media reports rather they are highlighted, discussed and analysed. This has further led them towards identifying these women whose invisibility and inaudibility in the society are occasionally perpetuated and enhanced by the media (Joseph and Sharma, 1994).

According to Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke and Brian Roberts, “‘News’ is the end-product of a complex process which begins with a systematic sorting and selecting of events and topics according to a socially constructed set of categories” (Hall et al, 1978, p. 53). And within this systematic selection process media tends to focus on the sub-judicial cases that would garner huge public interest and attention. But in covering those cases, the public becomes an active participant and recipient of manufactured news stories that emerge from extensive media coverage. However, many would fixate on the fact that exclusive pretrial media reports serve a public purpose by eliminating the distance between the people and legal and administrative policies. On the contrary, the judiciary insists that media should never intrude upon the administration of justice.

According to the judiciary, the freedom of the press is a validated argument but certainly not an absolute right. And the power of the media to influence trials and encroaching upon fair trial is not

a protected right and neither an extended right of the media. To evaluate media's role in covering and discussing judicial trials and judiciary's evaluation of media's role in representing a trial, one need to discuss and understand the intricate legal provisions which focuses primarily on two contentions "Judiciary's outlook on 'Right to a fair Trial' and media's outlook on 'Freedom of the Press'. These two outlooks can further be analysed by exploring legal and constitutional trajectories which eventually plays a significant role in discussing the legal trajectories between '*fair trial*' and '*media trial*'.

The legal and constitutional trajectories in India revolving 'Trial by the Media' can be understood and explained from the standpoint of '*innocent until proven guilty*'. The term '*Right to a Fair Trial*' has no definitive definition in the legal provisions. However, this legal terminology corroborated under Code of Criminal Procedure, 1973 corresponds to The Bharatiya Nagarik Suraksha Sanhita, 2023 that provides a list of provisions for people to access their legal aid before the judiciary. Henceforth, this particular terminology can legally be comprehended as '*Right to a Fair Trial*'. However, a nexus between Article 14, 20 and 21 and 22 of the Indian Constitution can further help to understand the trajectories leading towards 'Right to a Fair Trial'.

Part III of the Indian Constitution deals with Fundamental Rights secured by the citizen of India. However, Article 14-18 deals with 'Right to Equality' and Article 19-22 deals with 'Right to Freedom'. A further detailed explanation is required to understand the constitutional provisions that indirectly address citizen's 'Right to a Fair Trial'. Article 14 of the Indian Constitution states that every person within the territory of India shall be subjected to equality before the law or the equal protection of the laws. Article 20 further provides protection in respect of conviction for offences. Thus, indirectly addressing citizen's 'Right to a Fair Trial'. The Indian Constitution has also given every individual residing within the territory 'Right to Life and Personal Liberty' under Article 21, which indirectly addresses their 'Right to a Fair Trial' with many other legal interpretations. Just like 'Right to Privacy' is an extended right of an individual that can be exercised under personal liberty, similarly right to a fair trial can be interpreted as an inviolate and implicit right of a convict within the Right to Life under Article 21 of the Indian Constitution. Moreover, the 'Right to a Fair Trial' deals with the fact that each individual has an inviolate right to be represented; this is further addressed indirectly in Article 22, which clearly provides every person the right to be represented and to consult a lawyer of their choice. These constitutional provisions underscore the importance of a 'fair trial' as an inviolate right; however, its full scope often relies on indirect interpretations that form an integral part of constitutional law. Furthermore, in assessing individuals' right to access fair trial under legal trajectories, the sections of the Code of Criminal Procedure, 1974 now corresponds to The Bharatiya Nagarik Suraksha Sanhita, 2023 needs to be discussed. There are various sections that indirectly correspond to the accused's 'Right to a Fair Trial' under the 'Right to Bail'. For example, Section 47 of The Bharatiya Nagarik Suraksha Sanhita, 2023, corresponds to Section 50 of The Code of Criminal Procedure, 1973, 'Disclosure of Identification' (*Section 54 of The Bharatiya Nagarik Suraksha Sanhita, 2023 corresponds to section 54A of the Code of Criminal Procedure, 1973 (2) of (1974)*); 'Right to health and safety under custody' (*Section. 56 of The Bharatiya Nagarik Suraksha Sanhita, 2023 corresponds to section 55A of the Code of Criminal Procedure, 1973 (2) of (1974)*), The right to 'Evidence for Defence' (*Section 270 of The Bharatiya Nagarik Suraksha Sanhita, 2023 corresponds to section 247 of the Code of Criminal Procedure, 1973 (2) of (1974)*), 'Right to Plea Bargaining' (*Section 290 of The Bharatiya Nagarik Suraksha Sanhita, 2023 corresponds to section*

265B of the Code of Criminal Procedure, 1973 (2)of (1974)), and ‘Right to trial in an open court’ (Section 366 of The Bharatiya Nagarik Suraksha Sanhita, 2023 correspond to section 327 of the Code of Criminal Procedure, 1973 (2)of (1974)).

But here, it can be rightly observed that media’s involvement in trying criminal cases resulting to ‘Media Trial’ is not directly addressed under constitutional or legal parameters. However, the legalities held under the statements “whoever, prints or publishes, or ban on printing or publication”, is thoroughly used as a legal provision to control media’s encroachment upon the Judiciary’s premises. However, freedom of press in India can indirectly be interpreted under Article 19 1 (a) that necessitates media to uphold information for public scrutiny. But media’s encroachment with the judiciary with their relentless pre-trial coverage and unnecessary publicity seems to be an area where obligation for a fair reporting form an integral part of discussion. Media’s undue pressure on the case and the judiciary leading towards a parallel trial henceforth is addressed by the judiciary under the Contempt of Courts Act, 1971. However, this legal provision does not directly penalize media trials; rather, it addresses interference with due process by utilizing Section 2 of the Contempt of Courts Act, 1971. Notably, the judiciary carves out an exception for the ‘innocent publication and distribution of matter’ as stipulated in Section 3(1) of the Act.

Openness and publicity form essential elements of a fair trial. However, media’s constant scrutiny of judicial proceedings which often results in distorted and sensationalised reporting, can create a media circus characterised by unwarranted publicity and sensationalism. According to Madhavi Goradia Divan “The whole idea behind open trials is to assist the administration of justice and it is necessary to ensure that publicity does not have the counterproductive effect of subverting justice” (Divan, 2023, p. 651). But the power of media and their ability to create overwhelming public opinion slowly pollute and threaten a fair trial paving a path towards media activism.

A further analysis within the premises of pre-trial publicity in media reports, “Women and Media Trials” has become a visible area with a growing attention. I feel that many judicial reports and media studies scholar had analysed this area while discussing media trials, but they did not or rather ignore the unethical practices when they covered women in the pre-trial publications. They remained cautious on the legal parameters, but never hesitated to break the ethical ones. Or can we just say the way media is discussing women has led to a suggestion that it is no longer “Women and Media Trial” but “Women in Media Trial”.

Ammu Joseph and Kalpana Sharma in their essay ‘Whose News and Who is News’ made a critical observation on the absence of women from media reports by quoting Gaye Tuchman from her essay ‘The Symbolic Annihilation of Women by the Mass Media’ (1978). Joseph and Sharma (1994) have observed that while performing three combinational functions of *absence, trivialization and condemnation* (Tuchman, 1978), media enhances and perpetuates the invisibility and inaudibility of women in the society. Joseph and Sharma’s (1994) concerns with the women and visibility of their voices in the media narratives thus offer us a discursive framework to understand and discuss ‘Women and the politics of under-representation’. According to David A. Sellers, while covering high profile cases media follows an effective concoction of planning, communication and coordination. And this further perpetuates the emerging conflict among the judge, community, lawyers, litigants, security, news media, and jurors (Sellers, 2008).

The status and visibility of women's voice in media is a significant area for discussion. However, representation and under-representation is the stepping stone to shape that visible status of women's voice. According to Gaye Tuchman, "just as representation in the media signifies social existence, so too underrepresentation and (by extension) trivialization and condemnation indicate symbolic annihilation" (Tuchman, 1979). Following the idea of underrepresentation, Gaye Tuchman tried to enunciate through her work, how media tends to 'symbolically annihilate' the visibility of women by performing three basic functions viz.: *absence, trivialization and condemnation*. A careful assessment of media reports suggests that these three underlying factors are the primary reasons for the diminished visibility of women's voices and status. Furthermore, when examining pre-trial media coverage, one can no longer overlook the frequent under-representation of women. The media has the tendency to discipline women or narrate their story from gendered lens, subsequently perpetuating the 'politics of under-representation'. The way media discusses women has raised a pivotal question: Is it a "Women **and** Media Trial" or "Women **in** Media Trial"?

With the onslaught of several mass media, the choice of media consumption and the choice of media production has further diversified representation by opening a multitude of information, opinions and analyses in front of the audiences with a pluralistic approach. In the year 1991 the Windhoek Declaration for the Development of a Free, Independent and Pluralistic Press (The Windhoek Declaration) (UNESCO, 1991), gave the first definition of media pluralism. The declaration equated media pluralism with the means that would 'end the monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community'. Furthermore, the final report prepared for the European Commission on the Independent Study on Indicators for Media Pluralism in the Member States- Towards a Risk-Based Approach. They defined media pluralism as "the scope for a wide range of social, political and cultural values, opinions, information and interests to find expression through the media" (KU Leuven et al., 2009). According to European Commission's final report on media pluralism, a pluralistic press can be a contributing factor for a functional democracy. The idea was to ensure that a wide range of socio-political, cultural values, information, opinions can find its expression through the media (KU Leuven et al., 2009). And this has further led the European Commission to identify five dimensions of media pluralism and identified them as risk domains. The identified five dimensions of media pluralism are "cultural pluralism in media, political pluralism in media, geographical/local pluralism in media, Pluralism of Media Ownership and Control and Pluralism of Media Types and Genres" (KU Leuven et al., 2009, p. 12-13). The controlling factor in annihilating the visibility and under-representation of women's voice is the erosion of cultural pluralism within the media. Consequently, many media reports marginalize female representation to such an extent that women are excluded and fail to be recognized as pivotal subjects. As defined in the report one must understand that, "Cultural pluralism in the media refers to the fair and diverse representation of and expression of various cultural and social groups, including ethnic, linguistic, national and religious minorities, disabled people, women and sexual minorities, in the media" (KU Leuven et al., 2009, p. 12).

As stated by Ammu Joseph "media pluralism is intrinsically about enabling the presence of a range of voices, values and perspectives in the media and thereby facilitating inclusive public debate, generating open discussion between various sub-groups and systems within a society, reflecting diverse interests and concerns" (Joseph, 2015, p. 6). But now when we are talking about pre-trial

media reports one can witness women are facing subjugation of under-representation. The media has a tendency to discipline women or narrate their story through a gendered lens; this, in turn, cultivates the conditions for the ‘politics of representation.’ This political framework facilitates the construction of visually deceptive, fragmented imagery that is subsequently transformed into a ‘spectacle’ through media mediation. According to Guy Debord “The spectacle is not a collection of images; it is a social relation between people that is mediated by images. The spectacle cannot be understood as a mere visual deception produced by mass-media technologies. It is a worldview that has actually been materialised” (Debord, 2002, p. 1). But the huge range of media attention on any issue can perpetuate and enhance a spectacle into a media spectacle. According to Douglas Kellner “media spectacle refers to technologically mediated events, in which media forms like broadcasting, print media, or the internet process events in a spectacular form” (Kellner, 2003, p. 2). Furthermore, Kellner refined his theory by introducing the concept of ‘megaspectacles’ by stating that, “Media spectacles are often constructed and played out in form of megaspectacles... Megaspectacles fixate attention on events that distract people from the pressing issues of their everyday lives with endless hype on shocking crimes, sports contests and personalities, political scandals, natural disasters, and the self-promoting hype of media culture itself” (Kellner, 2003, p. 93).

When one witness media’s coverage of women in pre-trial cases, media’s attention starts to create a media spectacle which in course of time turns into a ‘mega spectacle’. In many instances, the media remains so rigid in framing women as dependent agents and crime as an independent force that female visibility and audibility are effectively diminished within the media algorithm. As stated by Deborah L. Rhode (1995), “The marginalization of women occurs not only through failure to represent their perspectives but also through failure to recognize them as independent agents, apart from their relation to men” (Rode, 1995, 25). The legal parameters to identify and recognise the marginalization of women’s visibility and audibility in media narratives can no longer be situated outside of a democratic framework. A broader outlook towards stabilisation of women’s visible audibility needs to be addressed from both legal and ethical parameters. Although the latter is mostly exercised when there are no legal provisions available. This suggests that the rule of law for women in media trials becomes increasingly fragile when their fair representation is treated as a secondary rather than a pivotal concern.

The premises of democracy can be described as a unified structure that stands strong on the four pillars; the legislature, the executive, the judiciary and the media. Although Edmund Burke designated the legislature, the executive, the judiciary as the “*Three Estates*” in the Parliament, Thomas Carlyle (1841) stated “in the Reporters’ Gallery yonder, there sat a Fourth Estate more important far than they all (Carlyle, 1841, p.158). But what are the pertinent attributes of democracy that seems to accelerate a functioning governance? And to this Thomas Carlyle had an interesting outlook on democracy. According to Carlyle (1841) speaking is a powerful tool. The one who masters it, can diligently become a power and exercise authority to the whole nation. They can also act as a branch of government with the power of law-making. And clearly states “The nation is governed by all that has tongue in the nation: Democracy is virtually there” (Carlyle, 1841, p.159). This leads to a critical examination that, if the power of speaking is to exercise authority, then by not having it equates to marginalisation. Subsequently, when the media, through their published facts, seek to discipline and deprive women of their distinct voices, it constitutes a violation of democratic governance.

Let us take a note on the two women trial cases where the interference of the Indian television news channels in form of media trial was noticeable. First is the “**Aarushi Talwar case**” (2008) and second one is the “**Sheena Bohra Murder Case**” (2012). In both the cases women has dominated as the central figures. The aftermath of the cases turns out to be a huge public event in form of media trials.

The “**Aarushi Talwar case**” (2008) made its way to the top headlines where media was quite active in publicising their own series of trials. Media never left any attempts to scrutinize the role of the parents as the plausible suspects. And the list is exhaustive. Various new angles including sexual, illicit affair, honour killings were raised by the media as the possible reason for the crime. Media never let any new angle to be left unturned. And in the “**Sheena Bohra Murder Case**” (2012) grasps the national headlines for its continuous scrutiny of the parents and their alleged role as a potential suspect. The nature of both the crimes is quite similar. In both the cases women are the central figures, whether as the victim or as a suspect. And in both the cases media initiated a mediated prism of parallel trials that intervene not only with the judicial independence but with the individual’s right to a fair trial.

The way media intervene with their overt coverage has eventually turned pre-trial publications into a mega spectacle. And, this further led to contention between media and the judiciary. In order to identify and create a ground for maintaining an affable relation between media and judiciary, ‘Madrid Principles on the Relationship between the Media and Judicial Independence’ was undertaken in the year 1994 under 1985 UN Basic Principles on the Independence of Judiciary. According to the International Commission of Jurists (1994), a group of 40 legal experts and media representatives believed that “freedom of expression that necessarily encompasses freedom of media as an essential foundation of every society must try to convey and voice its opinion about information related to the administration of justice before, during and after trial, without violating the presumption of innocence” (p. 2).

Few news headlines that made the Aarushi Talwar murder case more sensational, resulting in prejudicial public scrutiny were, “If Talwars didn’t, then who killed Aarushi and Hemraj?”, “The Noida double-murder case continues to be a cliffhanger”, “Aarushi-Hemraj murder case: Intercourse theory takes a knock”; “Honour Killing angle in Aarushi murder case, CBI hints at adding charges”; “Aarushi resented affair”; “No one killed Aarushi Talwar?”, “Aarushi case: Talwars - Villains or Victims?”, “Aarushi Talwar murder case: Has justice been served?” In the Sheena Bora case, headlines such as “Relationship Between Rahul Mukerjea and Sheena Bora Listed as One of the Motives”, “Sheena Bora murder: Indrani Mukerjea, a schemer and manipulator by nature, says witness in the case”, “Sheena Bora murder case: Police probe ‘honour killing’ angle”, “Sheena Bora murder case: A web of lies and deceit?”, fuelled sensationalism, thereby inviting an unprecedented level of prejudicial public scrutiny.

One can often find media intrusion through leading questions and suggestive statements. It facilitates a functional design that not only creates sensationalized narratives of actual events but also manufactures a public perception of guilt. Thereby, exerting an undue pressure and interference with the due course of judicial proceedings. In both cases, one can observe that several intriguing angles were highlighted, resulting in a parallel trial. This media infringement ultimately forced a re-evaluation of their accountability. The NDTV news report titled “Aarushi case: Has

media compromised the trial even before it began?” provides a critical look at the “Trial by Media” phenomenon where the report ultimately asks whether it is possible to “end the media frenzy and let the law take its own course”. The report begins by identifying the Aarushi Talwar case as a landmark instance where the media is accused of “conducting their own trial” and compromising the due process of law. Further, the report highlights how early reporting moved away from facts toward speculative narratives involving “honour killing”, “neighbourhood safety”, and “teen behaviour”. Thus, this news report provides a self-reflective and critical analysis of the relationship between mainstream journalism and the judicial process.

Furthermore, in the “Sheena Bora murder case”, the NDTV news report titled “The Indrani files: Is the media doing its job or being tabloid?” provides a self-reflective and critical analysis of the relationship between mainstream journalism and the judicial process with the question “This is murder in the age of media, and it’s also raising interesting and difficult questions for the media. How should the media be covering this entire case, and has the media done its job so far?”. The news narrator Barkha Dutt explores the “overarching narrative” that has emerged around Indrani Mukerjea. She questions if the media is conflating a “diabolical streak” with the ambition of a “small-town girl” who broke into the elite. By asking the panel if the reaction would be the same if the accused were a man, she highlights the potential for the media to use a criminal investigation to pass moral judgment on a woman’s social climbing. Thus, questioning media’s stance in reflecting views on systemic failures rather than just the “sex and murder” aspects of the case, further perpetuates a biased class and gender narratives. Thereby, highlighting media interference with the due course of judicial proceedings through prejudiced publications.

It should be noted that although publishing judicial proceedings is a right exercised by media under legal and constitutional provisions, but this right is not absolute. The dominance of electronic media creates a situation where media outlets no longer report an event but potentially influence the event by shaping public perceptions in a cyclical manner. Media discourse utilizes language that directly influences public perception, effectively constructing sensationalized narratives of events. Media often crosses the fine line between right to publish and interference with the administration of justice. And this results in questioning their stance on ‘Right to a Fair Trial’. In both the cases media created an ample amount of allegation that led to the annihilation of women and their right to have a fair trial. In this process, the media not only managed to divert attention from the heinous crime against women, but also established a thriving ground for cultivating their own sensationalized narratives.

But with the onslaught of media with their adverse publicity of trials led the Indian judiciary probe into the matter. The 200<sup>th</sup> Report of the Law Commission of India (2006) on “Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)” addressed the agility of the media to conduct a parallel trial with the Indian judiciary. Thus, leading towards the growing concern about the potentiality of media jeopardizing fair trials. The report sought to find a balance between the right to free speech and the right to a fair trial by framing a draft bill. It aimed to ensure media reporting doesn’t jeopardize the legal process while upholding freedom of expression. It clearly states that media person connected with print and electronic media should be equipped with the legal and constitutional provisions that make freedom of media not absolute.

But cases that seem to gather huge public attention would rather participate in the unethical practice of silently annihilating women in the media. The judiciary has taken note of “Trial by Media” as an evolving practice of journalism and declared to be a predicament for the judiciary and individual’s right to a fair trial. However, they have failed to address the ways women have to face targeted discrimination from the media, that often leads to “Women in Media Trial”. Different issues require different legal approaches and protection. To this note I would like to conclude that even Indian Judiciary and government has addressed “Trial by Media” as a menace but it has not introduced a direct legal provision for it. And most importantly, the judiciary and the government need to address media’s encroachment upon women’s right to a fair trial as an essential part of discussion and policymaking.

### Notes

1. It must be noted that the present research work was undertaken within the timeframe of 2006-2013. The particular timeframe holds significant importance within the Indian Judicial System. The year 2006 marks as the publication of the 200<sup>th</sup> Report of the Law Commission on “Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)” For detailed discussion on the point see Law Commission of India. (2006). *Report no. 200 on trial by media: Free speech vs. fair trial under criminal procedure (Amendments to the Contempt of Courts Act, 1971)*. Government of India. <https://lawcommissionofindia.nic.in/reports/rep200.pdf>. Subsequently, the year 2013 marked as the enactment of The Criminal Law (Amendment) Act, 2013. This amended act primarily brings several laws related to violence against women. For detailed discussion on the point see Criminal Law (Amendment) Act, 2013. [https://www.indiacode.nic.in/bitstream/123456789/15357/1/criminal\\_law\\_ammend\\_act\\_2013.pdf](https://www.indiacode.nic.in/bitstream/123456789/15357/1/criminal_law_ammend_act_2013.pdf).
2. The concept of ‘Rule of Law’ can be traced A.V. Dicey’s “Introduction to the study of the law of the Constitution” (1885). Here Dicey has clearly stated the nature and general applications of ‘Rule of Law’ that highlights the general characteristics of a political structure of a country. However, Dicey has placed his observation from political institution of England, but the concept of “Rule of Law” still posits its interpretation in current political scenario. According to Dicey, there are two features that are characterised the political institution of London are the “omnipotence or undisputed supremacy throughout the whole country of the central government and the second of these features, which is closely connected with the first, is the rule or supremacy of law” (Dicey 1885, 107). Furthermore, Dicey stated that the supremacy of law is an important characteristic of the Constitution of England, which further extend the horizon of the definition of “Rule of Law” into three distinct categories, “Firstly, absence of arbitrary power on the part of the government, secondly, every man subject to ordinary law administered by ordinary tribunals and lastly, general principles of the constitution is the result of the ordinary law of the land” (Dicey 1885, 110-121).
3. “Trial by Newspapers” was the first addressed in the judicial verdict of *Saibal v. B.K. Sen* (AIR 1961 SC 633). This was for the first time the Supreme Court of India recognised this menacing practice of newspapers while they conduct an independent investigation into a crime that is sub judicial. The court remarked, “No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such

action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case”. However, later with the advent of cable television in India the practice of conducting parallel trial by the television channels coined a new term “Trial by the Media”. For detailed discussion of the case *Saibal v. B.K. Sen* (AIR 1961 SC 633) see <https://indiankanoon.org/doc/1379677/>.

4. For a detailed discussion on the Fair Trial Manual for Judges and Magistrates created by The Commonwealth Human Rights Initiative (CHRI) see Satish Mrinal, and Maja Daruwala, eds., *Fair Trial Manual A Handbook for Judges and Magistrates* (New Delhi: Commonwealth Human Rights Initiative (CHRI) and the International Human Rights Clinic, Cornell Law School, 2019), accessed November 30, 2023.

5. The original idea of “Symbolic Annihilation” is attributed to George Gerbner. Gerbner had clearly stated the power of representation and under-representation of a group in the media as a way to understand the relevancy of their social existence. Gaye Tuchman has tried to enunciate through her work how mass media tends to ‘symbolically annihilate’ the visibility of women by performing three basic functions viz.: absence, trivialization and condemnation. For a detailed examination of this point, see Gaye Tuchman, “The Symbolic Annihilation of Women by the Mass Media,” in *Hearth & Home: Images of Women in the Mass Media*, ed. Gaye Tuchman, Arlene Kaplan Daniels and James Benet (New York: Oxford University Press, 1978).

6. Douglas Kellner has built this concept of “Media Spectacle” around the concept of “Society of the Spectacle”, developed by Guy Debord (1967). For detailed examination on this point, see Guy Debord, *The Society of the Spectacle*, Canberra: Hobgoblin Press, 2002. Further, Douglas Kellner refined his theory by introducing the concept of ‘megaspectacles’ in his book *Media Spectacle*. For detailed examination on this point, see Douglas Kellner, *Media Spectacle*, London: Routledge, 2003.

7. The Bharatiya Nagarik Suraksha Sanhita, 2023 amended few changes in the Code of Criminal Procedure, 1973. Few changes that should be noted while assessing accused’s ‘Right to a Fair Trial’ are ‘Disclosure of Identification’ (*Section 54 of The Bharatiya Nagarik Suraksha Sanhita, 2023 corresponds to section 54A of the Code of Criminal Procedure, 1973 (2) of 1974*) marks a slight change. It merges two provisions and replaces traditional videography with audio-video electronic means. Regarding the ‘Right to Plea Bargaining’ (*Section 290 of The Bharatiya Nagarik Suraksha Sanhita, 2023 corresponds to section 265B of the Code of Criminal Procedure, 1973 (2) of 1974*), the law now mandates that an application must be filed within thirty days of the framing of charges, giving the Court sixty days to allow for a mutually satisfactory disposition. Finally, for the “Right to trial in an open court” (*Section 366 of The Bharatiya Nagarik Suraksha Sanhita, 2023 corresponds to section 327 of the Code of Criminal Procedure, 1973 (2) of 1974*) incorporates few changes in section 366 (2). It clearly states that Sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act (POCSO), 2012 (32) shall be conducted *in camera*.

## References

1. Carlyle, T. (1906). *Heroes, hero-worship and the heroic in history*. Longmans, Green, and Co.
2. Debord, G. (2002). *The society of the spectacle*. Hobgoblin Press.
3. Divan, G. V. (2023). *Facets of media law* (3rd ed.). Eastern Book Company.
4. Hall, S., Critcher, C., Jefferson, T., Clarke, J., & Roberts, B. (2009). The social production of news. In S. Thornham, C. Bassett, & P. Marris (Eds.), *Media studies: A reader* (pp. 648–655).

New York University Press. <https://sociologytwynham.com/wp-content/uploads/2014/10/policing-the-crisis.pdf>

5. Hariman, R. (1990). Performing the laws: Popular trials and social knowledge. In R. Hariman (Ed.), *Popular trials: Rhetoric, mass media, and the law* (pp. 1–21). University of Alabama Press.
6. Joseph, A. (2015). Media pluralism: Not just a question of numbers. *India International Centre Quarterly*, 42(1), 1–11. <https://www.jstor.org/stable/26316658>
7. Joseph, A., & Sharma, K. (1994). Whose news and who is news. In A. Joseph & K. Sharma (Eds.), *Whose news?: The media and women's issues* (1st ed.). Sage Publications.
8. Kellner, D. (2003). *Media spectacle*. Routledge.
9. KU Leuven, JIBS, CEU, & Ernst & Young. (2009). *Independent study on indicators for media pluralism in the Member States – Towards a risk-based approach: Final report*. European Commission. [https://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/pfr\\_report.pdf](https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf)
10. Resta, G. (2008). Trying cases in the media: A comparative overview. *Law and Contemporary Problems*, 71(4), 31–36. <https://www.jstor.org/stable/27654683>
11. Rhode, D. L. (1995). Media images, feminist issues. *Signs: Journal of Women in Culture and Society*, 20(3), 685–710. <https://www.jstor.org/stable/3174839>
12. Saxena, N. (2024). *Concise commentary on the Bharatiya Nagarik Suraksha Sanhita 2023* (1st ed.). LexisNexis.
13. Sellers, D. A. (2008). The circus comes to town: The media and high-profile trials. *Law and Contemporary Problems*, 71(4), 181–199. <https://www.jstor.org/stable/27654689>
14. Walton, J. A. (1998). From O.J. to Tim McVeigh and beyond: The Supreme Court's totality of circumstances test as ringmaster in the expanding media circus. *Denver Law Review*, 75(2), 549–593. <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1906&context=dlr>
15. For detailed discussion See. <https://misa.org/wp-content/uploads/2015/06/Windhoek-Declaration.pdf>.
16. For detailed discussion See. <https://www.icj.org/wp-content/uploads/1994/01/madrid-principles-on-media-and-judicial-independence-publication-1994-eng.pdf>
17. <https://www.indiatvnews.com/news/india-if-talwars-didn-t-then-who-killed-aarushi-and-hemraj-the-double-murder-continues-to-be-a-cliffhanger-406265>
18. <https://timesofindia.indiatimes.com/aarushi-resented-affair/articleshow/3073088.cms>
19. <https://timesofindia.indiatimes.com/city/delhi/aarushi-hemraj-murder-honour-killing-theory-cbi-ties-itself-up-in-knots/articleshow/26292788.cms>
20. NDTV. (2010, December 30). *No one killed Aarushi Talwar?* [Video]. YouTube. <http://www.youtube.com/watch?v=QeskGOcUYEE>
21. NDTV. (2013, November 25). *Aarushi case: Talwars - Villains or Victims?* [Video]. YouTube. <http://www.youtube.com/watch?v=TalTeo78iOU>
22. NDTV. (2015, September 19). *Aarushi Talwar murder case: Has justice been served?* [Video]. YouTube. <http://www.youtube.com/watch?v=H-xYwY9NIAk>
23. [https://timesofindia.indiatimes.com/city/delhi/intercourse-theory-takes-a-knock/articleshow/61074690.cms?utm\\_source=twitter.com&utm\\_medium=social&utm\\_campaign=TOIDesktop](https://timesofindia.indiatimes.com/city/delhi/intercourse-theory-takes-a-knock/articleshow/61074690.cms?utm_source=twitter.com&utm_medium=social&utm_campaign=TOIDesktop)
24. NDTV. (2012, May 12). *Aarushi case: Has media compromised the trial even before it began?* [Video]. YouTube. <https://www.youtube.com/watch?v=TmYAkdhK7HQ>
25. <https://www.ndtv.com/india-news/relationship-between-rahul-mukerjee-and-sheena-bora-listed-as-one-of-the-motives-1247056>

26. <https://www.firstpost.com/india/sheena-bora-murder-indrani-mukerjea-a-schemer-and-manipulator-by-nature-says-witness-in-the-case-3130878.html>
27. <https://economictimes.indiatimes.com/news/politics-and-nation/sheena-bora-murder-case-police-probe-honour-killing-angle/articleshow/48692218.cms?from=mdr>
28. NDTV. (2015, September 1). *Sheena Bora murder case: A web of lies and deceit?* [Video]. YouTube. [https://www.youtube.com/watch?v=n2pB\\_hlZLB0](https://www.youtube.com/watch?v=n2pB_hlZLB0)
29. NDTV. (2015, August 31). *The Indrani files: Is the media doing its job or being tabloid?* [Video]. YouTube. <https://www.youtube.com/watch?v=SQOLFHW7TCY>