



## **Gaps in the depiction of 'Trial by Media' in Indian films**

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**Abstract:** Freedom of expression is included in the constitution under Article 19(1). Within a democratic atmosphere, media in India exercises quite a free stand in terms of legal constraints. In many Indian films like *Sarabjit*, *Talwar*, *No one killed Jessica*, and *Rustom*, we see the depiction of the media, especially the trial by media. However, very often the portrayal of these media trials seems distorted and exaggerated. With the sudden publications/televasting by the print and electronic media in matters that are decided and sub-judice, one wonders its impact on the administration of justice and the judicial personnel. Afterall, judges are human beings and undue influence of irresponsible expression may taint the rational process of justice delivery system. There are some instances where media plays an excessive and negative role, and in some instances due to the media, justice delivery system became easy. This paper is an attempt to analyse the gaps between the depiction of trial by media in real and reel life by a choice of selected Indian films. Factors like freedom of expression and contempt of court shall be our focal points in discussing this issue. Questions like the following shall be discussed in this paper: a. Where are the gaps between the portrayal of media trial in real and reel life? b. What are the reasons for those gaps in depiction? and c. What are the repercussions of these gaps?

**Keywords:** Trial by media, films, justice, freedom of expression, contempt of court, trial, Bollywood.

### **Introduction**

Law is an integral part of many films today. A trial or court scene seems to be an inseparable part of so many films. Films always played the role of transmitting certain morals, values, ideologies, imagination and ideas of justice and liberty. Law helps easy dissemination of such ideas into the public domain, when embedded into the veins of films. It



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has become like the blood of films, a rather essential substance, without which the very existence of the film becomes questionable.

Film and law seem two very different mediums at the outset. However, there lies some deep-rooted fundamental commonalities if we look closely. Says Orit Kamir:

At first glance, the difference between law and film appear striking. One could argue that while law is a system of organised power, commercial film is constituted by an economics of pleasure. One is an authoritative, normative, centralistic, coercive system; the other, a world of amusing, escapist, popular-cultural artefacts. However, from a more nuanced socio-cultural perspective, law and film are two of contemporary society's dominant cultural formations, two prominent vehicles for the chorus through which society narrates and creates itself. (Kamir 256)

### **Bollywood and Law**

Bollywood has been injected with legal themes since the time you can trace its history from. Beginning from Guru Dutt's *Baazi*(1951) and Raj Kapoor's *Awara*(1951) to *Kala Paani*(1958), *Do Ustad* (1959), *Anari*(1959), *Adalat*(1960) to *Damini* (1993), *Veer Zaara* (2004), *Sarabjit*(2016), *Jolly LLB*, *Rustom* (2016), *No One Killed Jessica*(2011), *Talvar*(2015) and so on.

Law is becoming an integral part of Indian society fraught with injustice and crime, and Indian films are the reflection of such a society. Hence, a depiction of law seems absolutely essential. The most common themes in Indian films that have engaged the legal factor are murder (often brutal ones) followed by rape, drug trafficking, suicide, flesh trade, terrorism, assault, betting on cricket matches, illegal detention, trial by media and petty thefts.

### **Role of Media in Indian films**

Like law, media-the fourth pillar of democracy-has an important role in films, especially Indian films. More often than not, the media is portrayed in a negative light. The journalists and reporters are seen to surround powerful characters in the films with uncomfortable



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questions making them shaky. The media is seen to be as a factor of harassment, rather than being helpful. Though important, they are often shown to be corrupt and most of the time they are portrayed as using their position of power to their benefit- sensationalising news and susceptible to bribes. Often, it is a flawed representation and bears little or no bearing to the work of media persons in reality. Rarely, they are portrayed in a positive light and one such aspect in which they are seen laudable are the ones showing media trials. But again, how true or how false are these depictions of media trials in films will be explored further in this article.

### **Media Trials**

Media Trial or Trial by Media essentially means the impact of news coverage on a person's reputation of being guilty or not, before or after the actual verdict in a courtroom. It is the process of sensationalising a piece of news and giving a second verdict, before or after the real verdict. This phrase was popularised since the early 20<sup>th</sup> century/late 21<sup>st</sup> century to imply 'public hysteria' and a kind of widespread commotion is created and the person in the news comes under intense 'public scrutiny.'

### **Role of Media according to Law- Freedom of Speech and Expression**

The Preamble to the Constitution of India resolves to secure for the citizens of India, liberty of thought, expression and belief.<sup>1</sup> Article 19(1)(a) of the Constitution from which the media derives its rights guaranteed to every citizen to India, the "Freedom of Speech and expression". Article 19(1) (a) is a fundamental right guaranteed to every citizen of India. Media derives its rights from the right to freedom of speech and expression available to the citizen. Thus, Media has the same rights – no more and no less than any individual to write, publish, circulate or broadcast. The freedom of speech and expression has been described as the mother of all liberties. In Ramlila Maidan Incident, re<sup>2</sup>, the Hon'ble Supreme Court held "The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succor and protection to all

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<sup>1</sup> Constitution of India, Preamble

<sup>2</sup> RamlilaMaidanIncident, re, (2012)5 SCC I



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other liberties. It has been truly said that it is the mother of all liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a “basic human right”, “a natural right” and the like. With the development of law in India speech and expression has taken within its ambit the right to receive information as well as right to press.”

Media has now reincarnated itself into a ‘public court’ (Janta Adalat) and has started interfering into court proceedings and decision of the courts. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’<sup>3</sup>. Media trials tend to influence judges by subconsciously creating a pressure.<sup>4</sup>Media has undergone from being a simple medium of communication to the public to being a harbinger of change. Trial by media refers to pre-trial exposure of a case by the media through communication means like television, internet, and radio. These kind of exposure leads to a deliberating over the ongoing clash between the Freedom of Press under Article 19 and the Right to Fair Trial under Article 21 of the Constitution.<sup>5</sup>The freedom of speech and expression Under Article 19(1)(a) is a concept with diverse facets, both with regard to the content of the speech and expression and in the means through which communication takes place . It is also a dynamic concept that has evolved with the time and advances in technology. Article 19 (1)(a) covers the right to express oneself by word of mouth, writing ,printing or in any other manner . It included the freedom of communication and the right to propagate or publish one views. The

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<sup>3</sup>Essay on “Effect Of Trial By Media Before Courts” available at <http://www.lawteacher.net/free-law-essays/commercial-law/effect-of-trial-by-media-before-courts-law-essay.php>

<sup>4</sup> Article on “Media trials tend to influence judges: Delhi HC on India's Daughter documentary” published on Mar 12, 2015, available at <http://www.firstpost.com/india/media-trials-tend-influence-judges-delhi-hc-indias-daughter-documentary-2149773.html>

<sup>5</sup>Kausar Husain And Srishti Singh, South -Asian Journal of Multidisciplinary Studies (SAJMS) ISSN:2349 7858:SJIF:2.246:Volume 3 Issue 4,Trial By Media: A Threat To The Administration Of Justice



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communication of ideas may be through any medium, newspaper, magazine or movie, including the electronic and audio-visual media.<sup>6</sup>

On the flipside, press reporting might often generate unwarranted publicity and sensationalism. The journalist's understanding of the system of administration of justice can be shallow and reporting can be incompetent, distorted or misguided. "No one killed Jessica", "Dr. Talwar responsible for murdering daughter Aarushi", "Sen charged for sedition", "Ram Jeth Malani may take his case". These are few headlines which can easily be found while browsing news channels. But these are not mere headlines; this is what is served to the public by media with garnishing of interpretation and exaggeration which will add to their TRP. But the question arises is that to what extent Media is responsible and accountable to people.<sup>7</sup> The whole idea of open trials is to assist the administration of justice and it is necessary to ensure that the publicity does not have the counterproductive effect of subverting justice. A Judge should be able to decide the merits of the case objectively and in an atmosphere unclouded by public opinion. In *State of Maharashtra Vs Rajendra Jawanmal Gandhi*,<sup>8</sup> which arose out of rape of an eight year old girl, the Hon'ble Supreme Court expressed its dismay over the harm caused to the victim as a result of trial by media. A trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to miscarriage of justice.

### **Depiction of Trial by Media in movies**

Very often the trial by Media in movies seems exaggerated. It is not a true depiction as happens in real life. The reasons for the same shall be discussed later in this article. The portrayal of 'Trial by Media' in the following movies is discussed as follows:

#### **No One Killed Jessica**

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<sup>6</sup>Romesh Thapper Vs State of Madras , AIR 1957 SC 896; Sakal Newspaper (P) Ltd Vs Union of India ,AIR 1962 SC 305

<sup>7</sup>Kauser Husain And Srishti Singh ,South -Asian Journal of Multidisciplinary Studies (SAJMS) ISSN:2349 7858:SJIF:2.246:Volume 3 Issue 4,Trial By Media: A Threat To The Administration Of Justice

<sup>8</sup>(1997) 8 SCC 386



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In '*No One Killed Jessica*' (2011), we see the sister of Jessica Sabrina Lal running from pillar to post in order to get justice for Jessica Lal's murder. However, Manish Bharadwaj (who dons the role of Manu Sharma) gets acquitted because he is the son of an influential politician. The intervention of the media comes at the point in the story when Sabrina has lost all hopes of getting justice. She switches off the television when any news relating to her sister's case is telecasted. She even discourages her father to do so; she asks him to just forget it and move ahead. It is at this point that journalist Meera intervenes. She takes up the case vehemently, a case that she had thought was not important at all, a few days before. Meera begins her investigative journalism to get to the root of the matter. Everybody knew the truth but no one was proving it. So, she decided to do it. Meera tells a fellow journalist to fake being a film maker and call up Vikram (the key witness who had turned hostile) to offer him a film. Vikram falls in the trap and when he is told that the film will be shot in Hindi and English, he is quick to confess he knows both the languages, though he had denied in the court that he knew Hindi. His voice is telecasted and his statements are released to the public by the news channel in the movie. Secondly, a fake call is made to the man in the bar who served as a cleaning staff present at the crime scene. He confesses to what he had seen, but refuses to say so in the court- that too is recorded and played on the TV. Thus, Meera exposes the witnesses, one by one. Next we see some random person on the street sends an SMS "Candlelight March for Jessica at 5 pm, India Gate". This SMS keeps spreading from one person to another. And finally we see a huge crowd has gathered near the India Gate in Delhi with candles. Everyone has hoardings with messages like 'Justice for Jessica', 'Punish the Guilty', 'What did she do wrong', 'I am not afraid I am frustrated', 'No Justice No votes', 'Enough is Enough Remove the System', 'Thou shall not kill' etc. Then we see Meera and her editor meeting the President of India to tell him that they have receive about 2 lakh smses from the aggrieved public who feel that justice has not been done for Jessica. In the movie we see, in the ending scene, Meera meets Sabrina at the burial of Jessica to tell her that the High Court has sent a press release that the court will fast track the case so that it can be heard daily and justice can be meted out. Finally, just before the movie ends, there is a voiceover that Manish Bharadwaj was held guilty by the Supreme Court and given lifetime imprisonment.



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In the movie, it is shown that solely due to the influence of the media, justice was finally meted out. However, to quote from the Wikipedia:

“Senior advocate Ram Jethmalani, who represented Sharma in the Supreme Court, assailed the High Court verdict, alleging that the media had prejudged the issue and conducted a campaign to vilify his client. The Supreme Court accepted that there had been an element of "trial by media" but believed that it had not affected the decision of the High Court.”

### **Jolly LLB**

In the film *Jolly LLB*, Jolly or Jagdish Tyagi shifts to Delhi from Meerut to make it big in his career as a lawyer. Rahul Diwan is the son of a rich and influential man of Delhi who has been involved in a hit-and-run case. Jolly files a PIL by reading media reports in the newspaper and watching news channels. This is how the media influences not only Jolly, but also most of the people in Delhi. Like the culprit of Jessica’s murder, everyone knows Rahul has murdered five people sleeping on the footpath. The movie shows the immense influence and power of the media on the lawyer who files a PIL and eventually reopening the case and winning it. Initially, when Jolly files the PIL based on media reports, the judge mocks at him and tells him that the institute that had taught him law perhaps forget to teach him that media trials are not real trials. In the final trial scene, well-known lawyer of the country Rajpal mocks the media and indirectly states that the popular perception coloured by the media may not be the truth. But that is not the impression set of the media all along the film. Finally, we see that the judge gives the verdict in favour of the impression set by the media. The judge says that till then although he knew who the culprit was in most cases, he had to give the judgement based on evidence. In most cases, evidence was absent. But this time, in the case of Rahul Diwan, he would not let it happen. So, again we see how the media influences the lawyer and judge in meting out justice.

### **Sarabjit**



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Media of both countries India and Pakistan are shown in this film. Indian media is helpful for Dalbir Kaur, the sister of Sarabjit. At first, we see Dalbir struggling a lot in getting access to Pakistan, in telling the Pakistan government that that her brother is innocent and his name is not Ranjit Singh, as wrongly accused by the Pakistan police. The India media at first helps Dalbir in getting the attention of the Prime Minister. She is able to meet the Prime minister, but the meeting does not prove as helpful as expected. Eventually, we see a lot of candlelight marches. Though the candlelight marches are spearheaded by Dalbir, there is an implicit reference to media support. Finally, we see due to lot of media support and media trial, a Human Rights activist from Canada gets access to Dalbir, and he calls her up to tell that he is going to meet Sarabjit in jail. The activist tells the jailor to keep things tidy and remove chains from Sarabjit's hands and legs.

Next, we see the attitude of the Pakistani media is kind of hostile at first because of general animosity towards Indians (as portrayed in the movie) and also because of the backdrop of situations like Ajmal Kasab being hanged. The media says that if Kasab is hanged so soon, why have the Pakistani government allowed Sarabjit to live on for so many years? When the Pakistani media provokes Dalbir with such questions, she asks them to see Indians with a friendly, sympathetic eye instead of always seeing them as 'Dushman' (enemy), as Indians also have a tendency to see Pakistanis as 'Atankhwadi' (terrorist).

In the scene where Dalbir goes to see Sarabjit in jail the last time before his death, he is happy that though he is in prison, his name 'Sarabjit' is 'azad' (free). His name is roaming free throughout the world. He gives credit for that to his sister Dalbir. But here it can again be understood that it is the media trials that have given him his identity back, and people all around the world now know who he is, or what injustice has been done with him. It is also due to the efforts of the media that Ranjit Singh, the real culprit gets caught, and grounds for Sarabjit's innocence gets stronger. Also, we see in a particular 'fast-undo-death' scene, a politician comes to offer water and lend support to Dalbir and Sarabjit's family. The attention to the fast has again been gained by the media. Definitely, the effect of the media trial has been seen throughout the film, whether it be direct or implied, positive or negative.



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### **Rustom**

When Vikram Makhija's sister Preeti comes and asks her lawyer about the repercussion of a tabloid in the market publishing "Three Shots that shook Bombay", he brushes it aside as unimportant. He asks Preeti to ignore it because no one takes the tabloid or the Editor-in-Chief Erich Billimoria seriously. But eventually we see the might and influence of both Erich and his tabloid in influencing the jury members. Right from publishing headlines like 'Don't Punish an honest man' to 'Will the Soldier get justice today?', 'Rosy aborts Vikram's child', 'Victory assured' etc. When the judge tells Erich that by giving a headline like "Will the soldier get justice today?", especially by putting a question mark at the end of it, he is doubting the capability of the court and says: "Aap jaante hai ek public platform pe yeh sawaal puch kar aap adalat ke tauheen kar rahein hai" ["Do you know by asking such a question in public platform, you are insulting the court"]. Billimoria even dares to influence the jury members by distributing free copies of his tabloid to them near the entrance of the court premises, and also retorts to the judge with a chuckle that he had done it because the jury might get bored sitting there.

Billimoria is kept in prison on two occasions during the court proceedings as punishment, and also fined Rs.100. However, we see the effect of the trial by media when crowds are showering flower petals on Rustom, women moonstruck over him and hoardings carrying messages like 'I love you Rustom', 'I am proud of you Rustom' etc. Billimoria has done his job of not diminishing the sense of sympathy for Rustom in the public eyes, as suggested by J.J Saheb.

Despite repeated warnings from the judge, Billimoria continues to influence public opinion, which ultimately has a bearing on the jury. When the judge asks him why he published some personal news about a witness Rosy, he says it is his duty to tell the truth to the society. Throughout the movie, we see Billimoria takes up the responsibility to tell the society that Rustom is not guilty, just because he was a Parsi and so was Rustom. The rivalry of the Sindhi versus Parsi is the deep cause.

### **Gaps in depiction of 'Trial by Media' - the Reality**



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### **No one killed Jessica**

The media trial plays a very vital role in delivering justice in Jessica Lal Murder case. But if we will go as per laws and regulations, the depiction made in the Bollywood Movie is over-rated which attracts the public or the viewers to know someone's personal life. The movie revolves round the personal life of not only the victim and the accused, but also the journalist Meera and her unusual stubbornness in investigating the case. The journalist of course is a fictional character here. This does not happen in the real case. In depicting the trial by media in the movie, it goes a little overboard in that sense. Rightfully, the lawyer interviewed by Meera asks: "Aap media wale decide karenge kya sahi hai?" [Will you media persons decide what is correct?] trying to imply that justice cannot be delivered by the media.

### **Jolly LL.B**

The film depicts Jolly (Arshad Warsi), as a young aspirant lawyer who meets a very prominent criminal lawyer Boman Irani in the sessions court in Delhi, who is defending the case regarding the charges of hit-and-run against Rahul Dewan. In the pursuit of money, Jagdish Tyagi files a Public Interest Litigation (PIL) against the acquittal of accused of hit-run case Rahul Dewan. PIL is always filed before a High Court or Supreme Court, not in a Sessions Court, as shown in the film. The film is journey deep into the judiciary system's corruption, which is not always true. Again, it hampers the credibility of the legal system and violates media ethics. The trial by media influences the lawyer Jolly that prompts him to file a PIL and ultimately it affects the judge and his decision-this again is an exaggeration.

### **Sarabjit**

In the movie Sarabjit, the trial by media is shown to arouse a lot of hope for the family members of Sarabjit. But in the real case, it does not happen like that. The movie shows a lot of media hype, hue and cry as well as lot of communication between India and Pakistan. However, in reality, the communication is less and media hype is also less.

### **Rustom**



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In the movie Rustom, the media frenzy, the public hysteria and cocktail gossip influenced the opinions around the case. The entire drama played by Eric Billimoria, though serious business is shown like a comedy-circus with Eric daring to misbehave in court and retorting in a witty manner to the judge about serious things in a silly manner. This of course cannot happen in real-life courtroom, which is much more serious business. Influenced by public support for the culprit and media publication, jury decided the case in favour of Rustom. In the movie, the jury's decision is seen as final. But in reality Nanavati, who plays Rustom, appealed to Government of Bombay through pardon application and the same was granted by the Governor of Bombay and only then Nanavati was released. The media intervention influences the judges not to convict Nanavati before the Court.

### **Other movies**

Even in a movie like Talvar, the trial by media is an undue interference with the Court proceeding. The movie is depicted accusing both Talvar family in one part and servants on the other part. And the depiction was so confusing that many viewers can't take a decision who is the accused in this case and also regarding the movie's stand. It created sensationalism among viewers to know the truth and also lowers the credibility of justice delivery system. The involvement of media in pre-publicity of verdicts or raising a voice on a majority issue which is somewhere not true affects the justice delivery system and imposes an influence on the judges to take the majority opinion.

### **Reasons for Gaps in Depiction**

The possible reasons why there exists a gap between the reality and reel life in the depiction of the media-especially the trial by media- might be because the film intends to have more entertainment and sensationalism. Media sensationalises, and film further adds the X-factor to make it even more sensational. Secondly, enough research might not have been done to know what happened in the real case, especially with regarding to the role of media. There lies the shortcoming of the filmmaker. Thirdly, very often, the film having known the real facts tends to distort some intentionally for effect because film, as we know, is a creative medium, and like the media, filmmakers also exercise certain freedom of expression.



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### **Repercussions of the Gaps in reel and real life**

Many people in the society get their first knowledge of law and media from films. For example – the recently released movie *Luka Chuppi* which indicates the legalisation of live in relationship but some where it also makes the concept diluted when it also show case live in with family .Indian Media should adhere to guidelines and ethics while depicting the facts through movies before the viewers. In that sense, the information disseminated by films has to be more serious business. In case of inaccurate depictions of the trial by media in films, both the media and the legal fraternity are depicted in a wrong light, and the public gets distorted information. One major consequence of proper depiction will be a lawless person or a layman will be aware about the socio legal changes and laws in the society.

### **Conclusion**

The Law Commission of India in its 200th report (August 2006) viz. " Trial by Media: Free Speech and Fair Trial Under CrPC, 1973 " elaborately dealt with several aspects of the rights relating to freedom of speech, freedom of the press, and freedom of fair trial. The Commission recommend for enactment of a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest and during investigation and trial. 200<sup>th</sup> Law Commission Report brought many changes on the issue Trial by media.

The Report recommended empowerment of the High Court to direct print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast. Such a practice is prevalent in many countries including the U.K. The report also said that publications with reference to character of the accused, previous convictions, confessions, judging the guilt or innocence of the accused or discrediting witnesses could be a criminal contempt.<sup>9</sup>Further the news channel's /journalist's own opinion over the *sub judice* matter shall not be aired and nothing else should be done which interferes or tend to interfere, or obstructs or tend to obstruct the course of

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<sup>9</sup>Hemant Kumar, Advocate .Judiciary Vs Media: Avoidable Confrontation available at <http://lawyersupdate.co.in/LU/8/832.asppublished> in 2013



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justice in connection with any pending judicial proceeding along with nothing of the sort which amounts to Contempt of Court. Media should acknowledge the fact that whatever they publish has a great impact over the spectator and hence, a right balance should be struck by courts while interpretation of cases, between the right to free press and principles of natural justice guiding fair trial of cases. The Contempt of Court Act defines both civil contempt and criminal contempt. Trial by media is also considered as contempt of court taking into consideration the role played by media and violation of the code of conduct.<sup>10</sup>

Freedom of the press emanates from the freedom of expression which is guaranteed to all citizens by Article 19(1)(a) of the Indian Constitution . Press/Media has never given higher footing than any other citizen and cannot claim any privilege unless provided by law .Such limitations on the exercise of the freedom of expression when not followed should be shown in movies as contempt of court or detrimental in different ways. Law should be projected as a much more serious business than it is being shown in Indian films today. The role of media should be deglamourised in films, so that the youth is not led astray by unusual depictions and the common people get the correct ideas about law and media.

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<sup>10</sup>Sunil Sharna Vs The State ( Delhi Administration ) and Ors 1996 CriLJ 3944

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