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Media Trials: A Bane or Boon for Democracy?

SAMYAK MORDIA¹

ABSTRACT

Media is the fourth pillar of democracy and is supposed to keep the other democratic institutions in check. But recently, in many democracies, especially India, it has been observed that media tries to sensationalise topics and pieces by defaming people and delving into their personal lives, violating their Right to Privacy, and Right to Liberty, which are guaranteed by the Constitution of India. A question that therefore emerges is whether media is a bane or a boon for the democratic society.

I. INTRODUCTION

Today, everyone, from infants to adults, gets influenced and informed through various media sources. Media plays an extremely vital role in shaping the minds of the members of society. It is supposed to bring transparency to a democratic system and is essential to the survival of a democracy. It is therefore rightly referred to as the fourth pillar of democracy. Nowadays, it can be observed that the media, instead of reporting facts on an issue, have started acting as the judge, jury and executioner. Objectivity and unbiased reporting are something which is diminishing from the media. A censored media is something which is extremely harmful to democracy, but unaccountable and biased media is something which is even more dangerous. The media cannot take over the role of the judiciary and pronounce people as guilty or innocent as this results in the erosion of civil rights in society.² This paper argues that even though media is essential to the functioning of a democracy, it often infringes on the rights of individuals.

Media is an instrument which allows people to express their feelings, views, opinions, ideologies, etc. It also plays an extremely vital role in shaping the mindsets of people due to its reach. Millions, if not billions of people, regularly watch the news and access various other media platforms. The presence of media is extremely necessary to the working of a democracy like India since it helps in bringing about accountability to the actions of the government. Keeping the necessity of a free press in mind, Justice Venkataramiah of the Supreme Court of

¹ Author is a student at Jindal Global Law School, India.

² Urvashi Singh, *Trial by Media a Threat to Administration of Justice*, LEXOLOGY, (Nov. 26, 2020, 11.06 A.M.), <https://www.lexology.com/library/detail.aspx?g=52a59428-9ce1-4fe5-8af9-f10750d37ca4>

India has stated, “Freedom of the press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible on a large scale, particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions, without which a democratic electorate (Government) cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”³

The term ‘media trial’ is of recent origin but derived its meaning from the Roscoe ‘Fatty’ Arbuckle case, where the defendant was acquitted by the court but lost all of his reputation and mode of livelihood after the media declared him guilty.

II. POSITIVE ASPECTS OF MEDIA COVERAGE IN A DEMOCRATIC SETUP

In the United States, the discrimination of people of colour by the police came to light during the brutal murder of George Floyd due to media coverage of the same.

The media has been integral in getting justice to the victims in various cases like the Jessica Lall murder case, where the case was fast-tracked within a span of twenty-five days due to intense media coverage, and the accused was pronounced guilty.⁴

During the Nirbhaya gang-rape case, the media played an important role in gender activism and bringing light to the issue of minimal safety of women in the National Capital.⁵

In many other instances, the media has played an integral part in raising awareness and holding the government accountable. Many news channels and digital media houses called out the government for their discriminatory policies when they brought about the Citizenship Amendment Act (CAA)⁶. During the dramatic encounter of the gangster Vikas Dubey, the media rightly held the UP Police responsibly and brought forth their illegal actions in front of the world.⁷

³ Indian Express Newspapers v. Union of India & Ors., 1986 AIR 515.

⁴ NO ONE KILLED JESSICA (2011 film)

⁵ Rishikesh Kumar Gautam & Sonalee Nargunde, *The Delhi Gang Rape: The Role of Media in Justice*, 8 IJR (2014).

⁶ DH Web Desk, *How Foreign Media covered anti-CAA protests in India*, DECCAN HERALD, (Nov. 26, 2020, 12.48 P.M.), <https://www.deccanherald.com/national/how-foreign-media-covered-anti-cao-protests-in-india-786945.html>.

⁷ NL Team, *Was The Media Stopped Before the UP Police Killed Vikas Dubey?*, NEWSLAUNDRY, (Nov. 27, 2020, 10.41 P.M.), <https://www.newslaundry.com/2020/07/10/was-the-media-stopped-before-vikas-dubeys-encounter-2>.

III. NEGATIVE ASPECTS OF MEDIA COVERAGE IN A DEMOCRATIC SETUP

India's first Prime Minister, Pt. Jawaharlal Nehru said, "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press". What he would not have expected was that the press would misuse this unregulated freedom and encroach upon the civil rights and liberties of others.

Article 19 (1) (a) of the Constitution of India guarantees freedom of speech and expression, of which freedom of the press is an integral part⁸. This freedom, however, is not absolute and has reasonable restrictions. The article reads, "this right can be restricted by law only in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence"⁹. These reasonable restrictions are not being adhered to anymore.

The media has also started infringing upon the privacy of individuals, which goes against the guidelines laid down by the Supreme Court in the case of *R.Rajagopal v. State of Tamil Nadu*. The court has explicitly stated that the press can engage in uninhibited debate about the involvement of public figures in public issues and engagement, but the Right to Privacy of their private life needs to be maintained.¹⁰

The media has now started acting as courts and has started pronouncing verdicts even before courts do. These verdicts are not based on any evidence or hard facts but on public perception. The media houses show whatever gets them increased Target Rating Points (TRPs) since they help in increasing their revenue through advertisement. This extrajudicial trial converts the accused into convicts in the eyes of the people. While delivering a verdict, the courts keep in mind the principles of 'presumption of innocence until proven guilty' and 'guilt beyond a reasonable doubt'. These principles are not something which the media cares about. The media knows all its rights but hardly follow through with any of its duties and responsibilities towards society.¹¹

The Right to a Fair Trial is one of the basic rights which every human being needs. It has also been acknowledged as one of the basic tenets of justice in India. It means a trial which is free of any outside pressure. The verdict given by a judge in this form of the trial should be

⁸ Manmeet Singh, *Freedom of Press-Article 19(1)(A)*, LEGAL SERVICE INDIA, (Nov. 25, 2020, 11.51 A.M.), [http://www.legalservicesindia.com/article/1847/Freedom-of-Press---Article-19\(1\)\(a\).html](http://www.legalservicesindia.com/article/1847/Freedom-of-Press---Article-19(1)(a).html).

⁹ INDIA CONST. art. 19

¹⁰ Raghav Tankha, *Where Does Press Freedom End and Trial by Media Begin?*, THE WIRE, (Nov. 26, 2020, 12.02 P.M.), <https://thewire.in/media/press-freedom-trial-by-media-supreme-court>.

¹¹ Kakoli Nath, *Everything About Media Trials in India!*, FINOLOGY, (Nov. 25, 2020, 11.43 P.M.), <https://blog.finology.in/recent-updates/media-trials-in-india>

impartial. This is not possible if the media already declares an accused guilty since everyone, from the public to the judge, watches the same news. The judges can as easily be influenced by a case as any normal human being. Also, the public perception which is formed also puts pressure on the judges to do what the public thinks is right.¹²

According to the Supreme Court, “contempt by speech or writing may be by scandalising the court itself, by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon courts of justice to preserve their proceedings from being misrepresented, for prejudicing the mind of the people against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speech or writings are misrepresenting the proceedings of the court, prejudice the public for or against a party, or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal, is a grave contempt.”¹³

The Delhi High Court has also ruled that the charges must be framed against a person based on the facts available and not what the media portrays them. The conviction shall solely be based on the facts and not whether the media wanted the person to be guilty or not.¹⁴

During the OJ Simpson murder trial, there was a mountain of evidence present to convict Simpson of murder. However, the media portrayed him in such a manner that Simpson couldn't have done the murder of the victims, who was his ex-wife and her friend. This portrayal by the media resulted in the jury finding OJ Simpson not guilty.

In the Aarushi Talwar murder case, due to intense media pressure, which included allegations against the character of the victim, led to the arrest and conviction of her parents, Dr. Nupur and Rajesh Talwar, who were later found to be innocent by the Allahabad High Court, after serving nearly five years in prison. The arrest and conviction by the lower court were based solely on circumstantial evidence.¹⁵

In the Sushant Singh Rajput suicide case, various media outlets ran a parallel trial of Rajput's girlfriend, Rhea Chakraborty, defaming and villainizing her. BBC News reported that due to the death of her boyfriend, Rhea Chakraborty had “found herself at the centre of a vicious hate campaign led by some of India's most high-profile journalists and social media trolls.” News

¹² Nimisha Jha, *Constitutionality of Media Trials in India: A Detailed Analysis*, ACADEMIKE, (Nov. 25, 2020, 10.42 P.M.), <https://www.lawctopus.com/academike/media-trials-india/>.

¹³ State of Haryana v. Ch. Bhajanlal, AIR 1993 SC 1348.

¹⁴ Sushil Sharma v. The State (Delhi Administration and Ors. 1996 CriLJ 3944.

¹⁵ RAJESH TALWAR, THE KILLING OF AARUSHI AND THE MURDER OF JUSTICE (2017).

channels spun all types of stories from Rhea Chakraborty performing ‘black magic’, driving Rajput to suicide, to procuring drugs for him.¹⁶

This intense media pressure led the Narcotics Control Bureau to arrest Chakraborty for procuring drugs with intent to distribute. During the same case, many news correspondents and camerapersons were also seen barging into the homes of people without permission just because they were related to or knew alleged drug dealers.

IV. CONCLUSION

Media is extremely necessary to question the government and the authorities on their actions in a democracy. However, the media needs to be unbiased and objective in their reporting. It is not the media’s job to declare some as innocent or guilty. When the media does do that, then many times, the reputation of the innocents also gets smeared. They have to face a lot of repercussions due to the same and are always viewed as guilty by society. It is the work of the judiciary to decide who is guilty or not. The media has enormous power to influence the public, but with great power comes great responsibility. The media should respect the faith of the public placed in them and provide society with reliable and correct news.

¹⁶ Geeta Pandey, *Sushant Singh Rajput: Rhea Chakraborty on ‘media trial’ after Bollywood star’s death*, BBC NEWS, (Nov. 25, 2020, 10.42 P.M.), <https://www.bbc.com/news/world-asia-india-53932725>.