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A Critical Analysis of the Role of Media in the Justice Delivery System

Azam Indori

INTRODUCTION

Media has been acknowledged as the fourth pillar of democracy. Global citizens rely on media now more than ever in this highly advanced new world. It plays a critical role in molding and engraving attitudes, views and thoughts and in turn shaping our minds to its own tunes. The media warrants a sizeable impact on what the public thinks, the media thinks it first then the public. Such colossal power comes with huge responsibilities as well, the media must use its vast influence with measured steps. As we enter this new highly digitized society, the grave ramification the media has on us must be put under a microscope and be analyzed for our own sake. This is exactly what this paper aims to do; find out till what extent does the media and its actions or in some cases inactions impact the judicial process and also cases in the public forum.

Media trial is not something which has been propounded today. It's very traces go back to the mid-20th Century. There have been many times where the media has played a pivotal role in shaping mentalities of the people and impacting the judgement of the judiciary in many famous cases. This sometimes have resulted in humiliation of the accused who may be innocent trapped under false charges. People tend to believe everything they watch or listen through the means of the media without probing into actual truth behind the information. Although there have been some incidents where media activism has been helpful in ensuring justice to the victim and punishment to the guilty. There are numerous examples where media trial has influenced the justice mechanism, some of them are itemized below.

K.M. NANAVATI CASE

This was the first media trial incident that occurred in 1959. In this case, Kawas Manekshaw Nanavati, a Parsi naval officer was accused of killing his wife's lover Prem Ahuja, an influential Sindhi businessman with 3 shots of bullets. The Greater Bombay sessions court was already trying the case when a weekly tabloid '*Blitz*' owned by R.K Karanjia, a Parsi himself, started portraying the accused as a hero in the eyes of the public and the victim as a playboy who had an unscrupulous relationship with his friend's wife. Blitz started a smear campaign against the victim and his sister which made them look like reprobates and earned a lot of sympathy for the accused. People started looking at the accused as an upright naval officer who was betrayed by his own wife and friend while away on his service to the motherland. With publication of each and every twist and turn in the case on a regular basis the interests of the general public in the case pepped up. The copy of Blitz which was initially sold at 0.25 rupees was now sold at 2

rupees. Large campaigns were held by the Parsi community in support of Nanavati. This enormously influenced the court proceedings and the jury pronounced the accused as 'not guilty' with a landslide verdict of 8-1¹, the jury's decision shook the Court as well as the nation.

The acquittal was found perverse by the sessions judge who referred the case to the Bombay High Court.

The Bombay High Court accepted the prosecution's argument that the jury was misled and influenced by the media and a fresh hearing was initiated in which the High court sentenced the accused for life imprisonment for culpable homicide amounting to murder which was also upheld by the Supreme court. Public opinion was still in the favour of Nanavati which held the punishment too harsh and supported a proposal mooted by Blitz to grant pardon to Nanavati.

The government however feared that granting pardon to Nanavati may stimulate furious reactions from the Sindhi community. But around this time the government also received an application for pardoning a Sindhi trader Bhai Pratap who was convicted for a petty crime of misusing import licenses. Thus, the then Governor of Maharashtra Ms. Vijaya Lakshmi Pandit granted pardon to both Nanavati and Bhai Pratap on the same day.

This instance had a monumental effect on Indian judicial proceedings. It was the last jury trial in India after which the Government of India abolished this system. This case is a paramount example of media influence on court proceedings and verdict. It proves the massive power of the media of turning a guilty man innocent in the eyes of the public.

SANJAY DUTT CASE

In March 1993, a series of bomb blasts shook the financial capital of India, Bombay (now Mumbai). Sanjay Dutt was among several Bollywood personalities who were alleged to be involved in these bombings. It was claimed that Dutt accepted delivery of weapons from the co-accused of the bombings which was part of a weapon consignment that was delivered to the terrorists. However, in his confession Dutt stated that he took only 1 rifle of AK-56 from the producers of his movie 'Sanam' for protection of his family who were facing a lot of death

¹ K.M. Nanavati v State of Maharashtra, 1962 AIR 605, 1962 SCR Supl. (1) 567

threats during that time. In April 1993, he was arrested and charged under provisions of Terrorist and Disruptive Activities (Prevention) Act (TADA).²

Being a celebrity and son of veteran actors Sunil Dutt and Nargis, he faced a lot of condemnation and criticism from print and electronic media for alleged links with the terrorists. He was averred to have amicable relations with close associates of notorious gangster Dawood Ibrahim whose D-gang was behind the bombings. An extra judicial trial was going on in the media where he was declared a terrorist and a big fish from Bollywood who allied with the criminals to commit the heinous crime. The media also telecasted the actor's leaked audio tapes of the year 2000, where he can be heard talking to Chota Shakeel, Dawood Ibrahim's lieutenant.

However, in July 2007, Dutt was cleared of charges of involvement in the Mumbai Blast but was sentenced to 6 years of rigorous imprisonment under Arms Act for illegal possession of weapons by the TADA court. Media started depicting that Dutt was tried with too much leniency and was given preferential status because of his 'star' status and father's political connections. While some others in the film world and his fans maintained that '*Sanju*' was not a terrorist. During the course of court proceedings and serving his sentence, Sanjay Dutt was given many opportunities to visit his family and be out on bail or parole. This was highly questioned and jounced in the media.

In March 2013, the Supreme Court upheld the verdict but shortened the sentence to 5 years imprisonment.³ On 25th February 2016, Sanjay Dutt was released from Yerwada Jail, Pune after serving his sentence. After spending almost 23 years in and out of prison he walked as a free man.

In his interview after his release the actor said, "I request the media that whenever they write or mention anything about me, don't write 1993 blasts case before my name, I'm not into it."⁴

While many opine that because of being the son of legendary actors and celebrity status, Sanjay Dutt received an advantage in the case and was granted remission; many others and the actor himself think that it was his big name that went against him. In Sanjay Dutt's biopic '*Sanju*' media has been displayed as sensationalist and exploitative who were responsible for whatever

² Sanjay Dutt v State through C.B.I Bombay, 1834-35 of 1994

³ Sanjay Dutt v State of Maharashtra, criminal appeal no. 1060 of 2007

⁴ The Economic Times dated February 26, 2016

happened to Dutt and his misdeeds were pictured as ‘mistakes’. It was an attempt to whitewash the image of the actor.

It can be stated in this case that media did jump to conclusions regarding the actor in haste, however it cannot be neglected that somewhere it is still a question whether really Sanjay Dutt was actually guilty or not.

JESSICA LAL MURDER CASE

In *State v. Sidhartha Vashisht & Ors*⁵, popularly known as the ‘Jessica Lal murder case’, a model who was working as a celebrity bar maid at a party in New Delhi was shot dead at around 2 am on 30th April 1999. Many witnesses present at the party named Sidhartha Vashisht *alias* Manu Sharma, son of a Member of Parliament from Haryana as the murderer. The police carried out an investigation in this regard and a strong case was built against the accused. It seemed to be an ‘open and shut’ case where all the evidence pointed Manu Sharma to be the culprit. But during the trial many witnesses turned hostile and it was also alleged by the prosecution that crucial evidence was tampered and fabricated. This resulted in acquittal of the accused by the trial court on 21st February 2006.

There was a strong uproar from the media and the general public who dissented with the judgement of the court. It was seen as a miscarriage of justice and triumph of a hotshot who was able to distort the verdict in his favour. Numerous rallies, marches, candlelit vigils took place in the national capital and across the nation. News channel NDTV initiated a ‘Justice for Jessica Lal’ campaign through SMS that revved up the crusade against injustice. Meanwhile news magazine ‘*Tehelka*’ carried out a sting operation of 3 prime witnesses who had turned hostile. This operation unveiled the truth of how the witnesses were influenced and bribed to change their stand in the court of law. All this created a lot of pressure on the judiciary and as a result the Delhi High Court retried the case on a fast track basis and on 20th December 2006 punished Manu Sharma with a life imprisonment and a fine which was also confirmed by the Supreme court in 2010⁶. In this case Media activism played an important role in granting justice to the victim’s family. If it was not for the media, the guilty may have escaped the punishment.

⁵ 2009(93)DRJ145

⁶ Siddharth Vashisht @ Manu Sharma v State (NCT of Delhi), criminal appeal no. 179 of 2007

NITISH KATARA MURDER CASE

Nitish Katara, a 25 years old business executive from Delhi was murdered by his lover's brother Vikas Yadav and cousin Vishal Yadav in the early hours of 17th February 2002. Vikas Yadav was son of an influential criminal-politician D P Yadav. Katara was murdered as the Yadav family didn't approve the relation between him and their daughter Bharti. The 4 witnesses in the case initially stated that they had seen Nitish heading towards a car with Vikas and Vishal, however later on all of them turned hostile. The court was also not able to record the testimony of Bharti Yadav because as soon as arrests were done, she fled to London.

In May 2006, news channel NDTV managed to get the confession tape of the accused to the UP police where he admitted to kidnap and murder Katara. Also, the media obtained testimony of Bharti Yadav in London.

In August 2006, the Supreme Court on a plea by Nitish's mother transferred the case from Ghaziabad to Delhi considering D. P. Yadav's substantial influence in the area that may result in miscarriage of justice.

The trial court in Delhi on 30th May 2008 held the murder was an honour killing, convicted Vikas and Vishal and sentenced them to life imprisonment⁷. On 2nd April 2014 the Delhi high court upheld the verdict⁸ and on re-appeal of death sentence by Katara's mother extended the sentence to 25 years of rigorous imprisonment without remission. This was also affirmed by the Supreme Court on 3rd October 2016.⁹

The role of the Media in this case is very prominent which extricated the miscarriage of Justice by hands of a big wheel. In this case the media's active involvement ensured that the accused don't go scot free.

NOIDA DOUBLE HOMICIDE CASE

In the sensational case of Aarushi Talwar, the media played a vital role of delivering justice in its own hasty and unauthorised manner and held the parents of the victim accountable even before the courts could conduct a proper trial and deliver a fair judgement.

⁷ State v. Vikas Yadav & Anr., SC no. 78/02

⁸ Vishal Yadav v. State of UP, CRL. A. 741/2008

⁹ Vikas Yadav v. State of UP & Ors. CRIMINAL APPEAL NOS. 1528-1530 OF 2015

This case is considered as a prime example of media interference and public prejudice in modern India.

In this case a girl named Arushi Talwar, daughter of a dentist couple Rajesh and Nupur Talwar, living in Noida was brutally murdered at night in her own home. Initially the domestic servant was the main suspect as he was missing from the scene, but the next day itself the domestic servant 'Hemraj' was also found dead on the terrace of the same apartment building. Now the suspicion of the double homicide fell on the parents. While the investigation was going on, the media started portraying Rajesh Talwar as a cruel father who killed his daughter and the servant after finding them in an 'objectionable position' or on confrontation by his daughter on his extra-marital affair and servant's blackmailing. This yellow journalism was also condemned by the court in proceedings.

The worst part of the investigation was that the police didn't secure the crime scene and the house was open for the media and the curious public to venture. Thus, the crucial evidence got heavily compromised. According to the Central Bureau of Investigation (CBI) nearly 90% of the evidence got destroyed due to police negligence. Due to the dereliction of duty by the police, the case was transferred to CBI. The first CBI team in its investigation named three men as the suspect; Talwar's assistant Krishna Thadarai and two domestic servants Rajkumar and Vijay Mandal. A 'narco interrogation' was also done on all the three and a conclusion was derived that the suspects killed Aarushi after an attempted sexual assault and Hemraj on being the witness of the assault. However, it was alleged that the CBI team tried to extract the confession through coercive means and later all the three were released on lack of solid evidence.

The reinvestigation again started under a new CBI team which proposed closure of the case in 2009 because of critical gaps in the evidence. However, it named the Talwars as the prime suspects based on circumstantial evidence. The special CBI court rejected the closure report and converted it to a charge sheet against the Talwars. The Talwars moved Allahabad High Court¹⁰ and the Supreme Court¹¹ against the initiation of proceedings against them. However, the pleas were rejected by both the courts. In November 2013, a special CBI court convicted the couple for murder, destruction of evidence, misleading the probe and filing wrong F.I.R and were sentenced to life imprisonment for double murder. In January 2014 this verdict was challenged

¹⁰ Dr. (Smt) Nupur Talwar v CBI Delhi & Anr. criminal revision no. 1127 of 2011

¹¹ Dr. (Smt) Nupur Talwar vs CBI & Anr, criminal appeal no. 68 of 2012

by the Talwars in the Allahabad high court which in 2017 held in para 262 and 263 of the judgement that,

“The circumstances of this case upon being collectively considered do not lead to the irresistible conclusion that the appellants alone are the perpetrators of crime in question and on the evidence adduced in this case certainly two views are possible; one pointing to the guilt of the appellants; and the other to their innocence and in view of the principles expounded by the Apex Court in the case of Kali Ram (supra), we propose to adopt the view which is favourable to the appellants.

In view of the foregoing discussion, we hold that the prosecution has failed to prove its case against the accused-appellants beyond all reasonable doubts. The conviction of the appellants recorded by the trial court under Sections 302/34 and 201/34 IPC and that of appellant Dr. Rajesh Talwar under Section 203 IPC and the sentences awarded to them, cannot be sustained.¹²”

Thus, it acquitted the couple by giving them benefit of doubt and calling the evidence against them unsatisfactory.

The shoddy work of the police at the first crime scene investigation has been highly criticised, it shows clearly the incompetency of the police in such a crucial case. It still baffles the nation on how the police cooked up a story of double homicide making the parents prime suspects without any damning proof against them. After several investigations and the controversial narcoanalysis done on the other suspects as well as the parents which proved inconclusive but then didn't even provide sufficient evidence to convict the parents. Despite this, the Special CBI Court held the parents guilty of double homicide and sentenced them to life imprisonment. Is this how criminal trials are carried out? By flouting established procedural law and at the whims and fancies of the investigative agencies to cover up their own incompetency?

This really was a black day for the media in such public cases, and people really started questioning the authenticity and quality of reporting that is done in other cases as well. The case still remains one of the unsolved murder mysteries in the history of India.

¹² Dr. (Smt.) Nupur Talwar vs State of U.P. And Anr., Criminal appeal no. - 293 of 2014

DELHI GANG RAPE - NIRBHAYA CASE

There is hardly anybody who is unfamiliar with the Nirbhaya case.¹³ The 2012 Delhi gang rape incident shook the conscience of the masses and contemplated the actual reality of women abuse in India. The gang rape and murder of a 23 year old paramedical student in a moving bus questioned the basic issue of safety and security of the women in the country. While the daughter of the country was battling with her life in the hospital the entire nation stood with her in the fight. The media played a very active role with angry reporters telling facts of the case on a repeat mode and by covering live from the hospital where Nirbhaya was undergoing a number of surgeries. People took to social media such as facebook and twitter to show their outrage against the heinous crime. People changed their facebook profile to a black dot marking their support for Nirbhaya. Common herds across the country as well as abroad condemned the incident and criticised the government's failure to provide adequate protection to women. It was because of the widespread outcry of the general populace and the media pressure that the case was disposed of in a timely manner and the government was forced to amend the criminal law related to rape in the country. Due to the media's pro-active role prompt justice was served and the guilty were awarded death penalty.

DELHI NIZAMUDDIN MARKAZ CASE

In early March 2020, a Tablighi Jamaat religious congregation was held in Delhi's Nizamuddin Markaz Mosque. In this event many people from the country as well as abroad took part. It was alleged that this gathering was responsible for a major spike in the COVID-19 cases in India as later on more than 4000 cases and nearly 27 deaths were reported across the country linked to this event.

This attracted a lot of criticism from various political leaders, media and the general public including Muslims. Some news channels started calling the jamaat members as 'human bombs'. Debates were held on a daily basis on various news channels condemning this congregation. In the meantime, the chief of the tablighi jammata Maulana Saad Kandhalvi went on run before the police could interrogate and take him into custody. An audio clip of Maulana Saad went viral on 21st March 2020 where Maulana can be heard appealing to his followers not to follow social distancing norms and government guidelines related to covid-19. This created a lot of ruckus in

¹³ State v. Ramsingh & another, SC no. 114/2013

the media, however later on Delhi Crime Branch found this audio clip doctored that was edited using various previous speeches of Maulana.

Many state governments initiated criminal proceedings against the attendees and invoked Foreigners Act against the foreign attendees for flouting visa rules. The Uttar Pradesh government even imposed National Security Act against them. The Union Home Ministry also directed the state governments to trace all the foreign nationalist who attended the congregation and deport them after taking legal actions. It also blacklisted the visas of such foreigners. The attendees who travelled to different states either to visit friends or relatives or to stay at masjids after the event were traced across the country and were tested and quarantined. Meanwhile, videos started to circle on news channels and social media about ill behaviour of some quarantined jamaat members with hospital staff and medical workers.

On 21st August 2020, the Aurangabad bench of Bombay High Court quashed FIRs against 29 foreign nationals and 6 Indian citizen and held in its 58 pages judgement that,

“There were protests by taking processions, holding dharana at many places in India at least from prior to January 2020. Most of the persons participated in protest were Muslims. It is their contention that Citizenship Amendment Act, 2019 is discriminatory against the Muslims. They believe that Indian citizenship will not be granted to Muslim refugees and migrants. They were protesting against National Registration of Citizenship (NRC). There were protests on large scale not only in Delhi, but in most states in India. It can be said that due to the present action taken fear was created in the minds of those Muslims. This action indirectly gave warning to Indian Muslims that action in any form and for anything can be taken against Muslims.”

The bench also regraded that,

“There was a big propaganda in the print media and the electronic media against the foreigners who had come to Markaz Delhi and an attempt was made to create a picture that these foreigners were responsible for spreading covid-19 virus in India. A political government tries to find the scapegoat when there is pandemic or calamity and the circumstances show that there is probability that these foreigners were chosen to make them scapegoats. The aforesaid circumstances and the latest figures of infection show that such action against the petitioners should not have been taken.”¹⁴

¹⁴ Konan Kodio Ganstone & ors v. State of Maharashtra, Cri.W.P. 548/20 & ors.

The bench also observed that the Maharashtra police acted mechanically and didn't exercise the powers given to them under procedural laws like Cr.P.C and other substantive laws. There was non-application of mind by the police and despite there being no record for a prima facie case, charge sheets were filed. The bench also rubbished the allegations of flouting visa rules by the foreigners and held that the state government acted under political compulsion.

The media in the case of Tablighi Jamaat grossly misused its power and exploited the very prevalent Islamophobia present in our nation. Although it is true that the Jamatis contributed in the spread of the disease early on, but as soon as the depth of the situation was understood, proper measures were taken. Many Jamaatis also donated their plasma for treatment of COVID-19 patients. Despite the Jamat's efforts the media continued to blame the Muslim community for the quick spread of the disease and this led to rising tension among the community and struck a sensitive nerve in the country where communal tensions erupt at the drop of a hat. The media's portrayal of the entire situation was very biased and irresponsible.

CONCLUSION AND SUGGESTION

From the above cases it can be concluded that Media trials have more negative impact than positive. While in some cases the media's role proved to be pivotal by affirming that the guilty meet their fate who could have managed to make narrow escape from judicial imprudence, in many cases hasty investigations on the part of the media has slandered and molested innocents trapped under frivolous litigation. This amounts to character assassination of the accused which couldn't be reimbursed even when the accused is cleared of the charges by the court. In a very fresh case, hon'ble Justice D.Y. Chandrachud of the Supreme court quoted that the "right to human dignity is as important as the freedom of speech and expression."¹⁵

Media has the immense power of manifesting a saint as a satan and vice-a-versa. While many times media quotes in the very start, 'according to sources', the crowd forgets to apply its mind that the sources may be untrue and specious. It tends to believe that everything claimed is true and real. The legal principle of Presumption of innocence carved in the Universal Declaration of Human Rights (UDHR),1948 under Article 11 enshrines 'Innocent until proven guilty'¹⁶. But

¹⁵ Firoz Iqbal v. Union of India & ors. Writ petition (C) 956/2020

¹⁶ Universal Declaration of Human Rights, 1948 Article 11 (1) Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

because of the media trial this inviolable principle is disgraced, and the accused is regarded as 'guilty until proven innocent'.

The law of the land i.e. the Constitution of India guarantee's the media's Freedom of Speech under Article 19 (1) (a)¹⁷ but it also provides for reasonable restrictions under article 19 (2)¹⁸ which the media should not pass. Also, it should refrain from yellow journalism and should not go beyond the code of conduct.

Many experts are of the opinion that media trial is indeed an inordinate intervention in the justice delivery system. But in cases of Jessica Lal, Nitish Katara, Nirbhaya and some others it was the media who ensured the guilty is penalized and do not escape the loopholes of the system.

If honest journalism is conducted with verified reporting and no rash conclusions then media coverage of highly public cases can actually bring about the necessary justice. The mandate of the media should be to conduct righteous journalism rather than engaging in evidencing and henceforth delving into a full-blown media trial; which is unjust to the accused as well as the victims and is completely inessential. Thus, proving the point that freedom of speech as guaranteed under the Constitution of India does include under its umbrella the Freedom of Press as well, but this freedom like all others shouldn't be blatantly misused and abused to the benefit of one party and destruction of another.

There is a need for a proper verge which the media should not cross while broadcasting news. Also, it is the duty of every onlooker and reader to exercise one's mental faculties before drawing out conclusions.

¹⁷ Article 19 (1) All citizens shall have the right (a) to freedom of speech and expression.

¹⁸ Article 19 (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interest of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.