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Investigative Journalism and Trial by Media

Anna Mariam Koshy and Shreya

The freedom of electronic and print media is an integral part of freedom of speech and expression. Without a free and fearless press, the truth cannot be told and so circulation of all sides of information, ideas, perspectives and bringing different kinds of issues and developments in focus is necessary. This also maintains a healthy democracy. However, when journalists engage in roles they aren't supposed to or qualified to take up, we mislead the society on topics like mental health, concept of justice, fair trial and many other social and legal issues. While freedom of press is important to uphold the spirit of democracy, this 'freedom' doesn't legitimise violation of someone's right to privacy, fair trial and reputation. The media has a responsibility towards its viewers and the thirst for sensational news should not interfere with police investigation, nor should it invade court affairs. For the same, media ethics need to be adhered to. Media ethics includes specific ethical standards which it requires to follow be it print media, broadcast media or social media. Media ethics promotes and defends values such as a universal respect for life and the rule of law and legality¹. To ensure that the media doesn't drift away from its objectives and report as long as it is in public interest, certain standardized principles need to be followed by them.

Active reporting leads to an informed society and helps keep a check on the government. In this age of digitalisation, we get news in seconds from multiple sources like TV, applications and social networking sites. The competition to be first in reporting events for TRP can sometimes degrade the quality of research and method of delivering information. This competition is also what leads to trial by media. The term 'media trial' is not explained in any law books or acts. However, it is understood as a term used for the publication of unauthentic and subjective presentation of facts by the media. This also includes declaring someone guilty or innocent regardless of the judgment of the court. While media can expose problems in the society and bring issues to light, it could also at times, make unverified claims and disregard ethical and professional standards. Media trials can create prejudice against the accused and also facilitate circulation of false information. We have seen this in happen in the Uma Khurana case², an example of attack journalism, where an innocent school teacher faced defamation and harassment due to a fake sting operation conducted by the media in which she was accused of forcing students into prostitution. As a result, Khurana was manhandled by a mob, she was assaulted and her clothes were stripped off.

¹ Deepshikha- Media ethics and Responsible Journalism (2020).

² TV sting victim Khurana gets bail, HINDUSTAN TIMES (2007), <https://www.hindustantimes.com/delhi/tv-sting-victim-khurana-gets-bail/story-IBOhls9rGaiLoyiLjMt7aP.html> (last visited Sep 25, 2020).

Another such incident is the case of Saravjeet Singh³. Saravjeet was labelled a ‘pervert’ and a ‘molester’ by the media based on an allegation made on a social media post. The media circulated his photos without blurring his face and declared him guilty without even listening to what he had to say. After four years of public shaming, he was proven not guilty by the court. This is what happens when the media publishes its own version of the facts and declares someone guilty regardless of the verdict of the court. While exercising their freedom, the media shouldn’t do anything by which the investigation becomes prejudiced against the accused. Yellow journalism⁴ a concept developed by Joseph Pulitzer in the United States is a form of journalism that uses illegitimate sources or not well-researched news and this is now becoming rampant in India. Media has to maintain objectivity and present all sides of the story to the public. It is their duty to ensure that they do not engage in presenting selective narratives to gain popularity. They have to present the truth, irrespective of how undesirable it is to the viewers.

With the Rhea Chakraborty case being broadcasted for over two months now, media’s responsibility towards their work is being questioned.⁵ The media is now the self-proclaimed court and the journalists are the judges. With a woman being declared guilty of witchcraft and murder by the media for political and personal reasons; truth, honesty and nationalism are being sold. The more you buy into their propaganda, the more nationalist you are. As Dr. Eric Louw has written in his book titled- ‘The Media and Political Process’, “the line between news and entertainment, and journalism and anchorman performances, becomes blurred as stories are geared to entertainment, conflict, drama or titillation.”⁶ Media should be giving us an accurate reflection of reality, but what we see today is only the spread of misinformation and the brainwashing of the masses.

There is a requirement to regulate and filter what the media can show us, considering the increased level of toxicity generated by media in the present times. To keep their prestige and independence, media needs a deep awareness of their primary responsibility to provide a good public service⁷ and this will happen only when we as citizens ask legitimate questions and refuse to adjust to whatever they try and feed us with. Media, to a great extent, is nothing but a reflection of what we wish to see

³ The Logical Indian, *After 4 Years Of Public Shaming & Struggle, Saravjeet Singh Finally Proven Not Guilty On Jasleen Kaur Case* (2019), <https://thelogicalindian.com/news/saravjeet-singh-jasleen-kaur/> (last visited Sep 25, 2020).

⁴ Milestones: 1866–1898 - Office of the Historian, <https://history.state.gov/milestones/1866-1898/yellow-journalism> (last visited Sep 25, 2020).

⁵ Distasteful Media Trial Of Rhea Chakraborty, <https://thelogicalindian.com/humaninterest/rhea-chakraborty-media-trial-23559> (last visited Sep 25, 2020).

⁶ Dr. Eric Louw- *The Media and Political Process*, (2005) Pg. 67, Para 3.

⁷ Claude-Jean Bertrand- *Media Ethics and Accountability Systems*, Pg. 6, Para 5.

and hear and what we demand from them. Therefore, poor journalism changes when we change and when we become aware and fact-check.

Now, the question that arises is that since freedom of media comes under the freedom of speech, is there no legal remedy available against fake and outrageous news? To answer that we shall refer to Article 19(1) (a) of the Indian constitution⁸ which states that everyone has freedom of speech and expression and the media has right to share their opinion. But this right is restricted through article 19(2) of Indian constitution.⁹ This keeps a check on provocative speech and hate speech. Anything that disturbs public peace does not fall within the scope of this article. Moreover, Media trial is form of criminal contempt,¹⁰ that is, once a case has reached the court, nobody is allowed to publish their own version of facts. In a case related to rape of a girl which received unnecessary publicity, the Supreme Court stated that a trial by media or by public agitation is the very antithesis of the rule of law and that it can also lead to miscarriage of justice¹¹.

We would also like to refer to section 3(2) of the Contempt of Courts Act, 1971¹² which states that there should not be any media trial done until full immunity is not granted for publication and the case is pending. In the ongoing case of Sushant Singh's alleged suicide, the media, even before filing of the charge-sheet, announced that Rhea Chakraborty was guilty of murder. As a result, we saw the beginning of a nation-wide witch-hunt and songs written to slut-shame her. This worsened when the media reached Rhea's house and started harassing the neighbours. We also get to see the media hounding her with their microphones forced onto her face with the hope of getting a little more entertainment for the day. This raises an important question- is she not entitled to her personal space and social distancing norms during a pandemic?

Further in the case *R.K. Anand v. Delhi High Court*¹³, the constitutionality of media trial was questioned and Supreme Court observed that media trial can be harsh by just questioning and advertising the reputation of a person in their media channel. The court further stated that Media trial also interferes

⁸ Constitution of India, https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2019 (last visited Sep 25, 2020).

⁹ Id.

¹⁰ 200Th Report On Trial By Media Free Speech And Fair Trial Under, <https://indiankanoon.org/doc/42810882/> (last visited Sep 25, 2020).

¹¹ *State of Maharashtra v. Rajendra J. Gandhi* (1997) 8 SCC 386.

¹² Section 3(2) in the Contempt of Courts Act, 1971, <https://indiankanoon.org/doc/1689734/> (last visited Sep 25, 2020).

¹³ *R.K. Anand v. Delhi High Court*, (2009) 8 SCC 106.

in one's right to fair trial which is a part of right to life¹⁴. Careless journalism can very well lead to miscarriage of justice which will deprive an individual of their right to live¹⁵ with dignity.¹⁶ The significance of fair trial becomes an important topic of discussion every time media sensationalizes any incident. Articles are written on how this interferes in the procedure of the court but like every other news, this too fades away and the whole discussion is revived once again when we witness a similar case. Media trials also violate the principle of presumption of innocence mentioned under the Evidence Act.¹⁷ It has been stated by the Supreme Court judges that they are likely to be influenced by media trials and their focus point, as seen in the case *Reliance Petrochemicals v. Proprietor of Indian Express*.¹⁸ A judge presiding over a matter that has gained media hype is likely to be influenced subconsciously if not consciously. This may manifest in either the judge being apprehensive about public reaction after he passes a judgment against the "media verdict" or when he feels pressurized to act according to the story of the media, gravely wrecking the impartiality that he/she is expected to uphold.

Some instances of court regulations and the government's timely intervention could be seen in the Nirbhaya gang rape case¹⁹ where, in order to protect the identity of the victim, the Indian govt. directed the media to address her as Nirbhaya only. Another instance is of the Aarushi Talwar murder case²⁰, where the Supreme Court passed a controlling request criticizing the media for reporting unverified facts during the trial. As stated above, such actions lead to contempt of court and aren't protected under freedom of media.

Despite all the existing provisions and judgments, as mentioned before, there have been instances of violation of privacy and damage to reputation and this is happening even today because the law doesn't prohibit it in the abstract. We as viewers are equally responsible in the degradation of the quality of journalism in this nation and this will unfortunately continue to happen until we decide that it won't. Media can function well and do justice to the society only when it is independent and doesn't function

¹⁴ Article 21 in The Constitution of India 1950, 21, <https://indiankanoon.org/doc/1199182/> (last visited Mar 14, 2020).

¹⁵ *State of Maharashtra v. Rajendra Jaunmal Gandhi*, (1997) AIR SC 3986.

¹⁶ TV sting victim Khurana gets bail, HINDUSTAN TIMES (2007), <https://www.hindustantimes.com/delhi/tv-sting-victim-khurana-gets-bail/story-IBOhls9rGaiLoyiLjMt7aP.html> (last visited Sep 25, 2020).

¹⁷ Section 4 in The Indian Evidence Act, 1872, <https://indiankanoon.org/doc/750738/> (last visited Sep 25, 2020).

¹⁸ *Reliance Petrochemicals v. Proprietor of Indian Express*, (1988) 4 SCC 592.

¹⁹ *Mukesh & Anr. v. State for NCT Delhi and Ors.* (2017) 6 SCC 1.

²⁰ *Nupur Talwar v. CBI and Anr.* (2012) 11 SCC 465.

based on special interests of the rich and powerful. It ought to maintain accuracy, objectivity and accountability. There has to be adequate representation of all sides and perspectives of any incident. What would be 'adequate' can be decided based on the *harm-limitation principle*²¹. This principle is based on two questions- if every information gathered needs to be presented? If yes, how will it be done? The meaning is that some weight is required to be given to the negative consequences that could come out of full disclosure, creating again a possible ethical dilemma²². Therefore, media needs to do reporting with great sensitivity and in such a way that it does not harm the people involved and concerned. This includes suspects before they are criminally charged, juvenile suspects the accused, victims (especially of sex crimes or any violent crimes) and their family members. As per this principle, while gathering information, conducting interviews and reporting the same, the anchors and journalists need to be considerate.

²¹ Harm-Limitation Principle in Journalism

<https://hosbeg.com/harm-limitation-principle-in-journalism/>

²² Deepshikha- Media Ethics and Responsible Journalism.

<https://www.legalbites.in/media-ethics-and-responsible-journalism/#:~:text=%20The%20following%20are%20some%20of%20the%20general,act%20on%20behalf%20of%20special%20interests.%20More%20>