

Trial by Media: Hindrance to Justice

Misinformation is not like a plumbing problem you fix. It is a social condition, like crime, that you must constantly monitor and adjust to.

-Tom Rosenstiel

Journalism was spoken of as an essential amenity to people and was the most reliable source of information in the past. There wasn't any need for categorization of journalism into the criteria of 'good' or 'bad' which is why many immunities were provided to the media. However, in recent times, it has become a bandwagon which easily lures the audience into believing that what they show is the ultimate and only available truth. In the name of investigative journalism, media houses influence the cognitive biases of the audience, attacking where people are most vulnerable. It has become a common phenomenon for media houses to spread sensational, manipulated news and intimidate people to make unverified conclusions, pretending facts do not matter anymore. It has become necessary to catalog this strategy of media which recklessly excludes important elements of good journalism and increases problems for both public and the judiciary. The fact that people have slowly stopped challenging the information provided by the media and have started considering trial by media more authentic than trial by court has to be taken into account too.

'Nemo iudex in causa sua' and *'Audi alteram partem'* are two basic principles enshrined in laws of natural justice which confirms that any decision against an accused is taken in a transparent, impartial and fair manner. This ensures that no one is condemned or unheard and everyone is given an opportunity to present their case before making reckless conclusions. The ICCPR has stressed on how trials of certain cases can be excluded from press and public if there is a ground to believe that publicity of such a case would prejudice the interests of justice or would affect the public order or private lives.¹ This very provision also beholds the spirit of laws of natural justice and such is upheld by almost every jurisdiction to protect the system of rule of law and promote neutrality in delivery of justice.

Correspondingly, 'anyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial'. This is the fundamental principle of criminal justice which is recognized by the majority of international instruments and is preached by the international community.² These principles have evolved in order to protect the liberty, dignity and rights of an accused. Anyone might be accused of any crime but unless it is proved 'beyond reasonable doubt' that the person actually committed the crime, the accused

¹ International Covenant on Civil and Political Rights (ICCPR), Art.14(1) 999 U.N.T.S. 171(Dec. 16, 1966) .

² Universal Declaration of Human Rights, Art.11 UNGA Res 217 A(III) (Dec. 8, 1948); International Covenant on Civil and Political Rights(ICCPR), Art.14(2) 999 U.N.T.S. 171(Dec. 16, 1966); European Convention on Human Rights(ECHR), Art.6(2).

has the right to be presumed innocent as a part of human rights.³ Conversely, these days' media has started befuddling its role with the role of court, completely disrespecting the rights of an accused and obstructing the fair proceedings of courts.

Manipulating information to prove an accused guilty and manufacturing ideology where the public disregard the role of courts and believe that they have every right to defame or dehumanize the accused is a normal activity for the media. Whenever any high profile or mysterious cases unfold, the trial phase of the case gets mass media coverage believing it to be an opportunity to enter into an 'aggressive journalism' competition prevalent in the market.⁴ Apart from laws this is also directly related to unethical practice as media houses decide not to function under legal rules or processes and focus on what will make the information 'breaking news' for the day.

Inappropriately, all these undertakings in relation to certain cases 'on trial' firstly violates the principles of natural justice by seizing away the right of an accused to a fair/unbiased hearing. The media not only has influence over the general public but also has influence over the lawyers taking up the case and presiding judges of the case. While giving final judgment, extraneous factors like public pressure, media reports or popular opinion should not influence the judicial verdict.⁵ The judges are trained and well-informed professionals who know how to act based on evidence and are not likely to be influenced by the opinions of the media. However, they are not free from the pressure of the public generated by the Media in an attempt to persuade or at times threaten the judges to give the verdict in the favor of public outcry rather than the verdict based on evidence.

For instance, in the case of the court clearly mentioned that "Distinction between trial by media and informative media has to be maintained - Trial by media to be avoided particularly at stage when suspect is entitled to constitutional protection - Reporting of sub-judice matters to be subjected to checks and balances so as not to interfere with administration of justice."⁶ Even though it is assumed that the media during the time was applauded for the role it played to make this case stand, the courts felt the necessity to stop the intervention because it had already anticipated the bizarre scenarios that are happening in present day context due to media intervention in fair trials.

In the context of India, a recent example of groundless and illusory case of trial by media can be seen in the death case of famous Bollywood actor Sushant Singh Rajput where an accused namely Rhea Chakraborty was shamelessly bashed by media calling her 'witch', 'killer' and

³ State of U.P. Vs. Naresh and Ors, 4 SCC 324 (2001).

⁴ FOX RICHARD ET, AL, 'CRIMINAL JUSTICE IN AN AGE OF MEDIA FRENZY' (2007).

⁵ SRI P. Srinivasa Rao 'General principles of fair trial' available at: (<https://districts.ecourts.gov.in/sites/default/files/1st%20Topic.pdf>)

⁶ Manu Sharma v. State, 6 SCC 1 (2010).

many other names which obviously made people think that she was the culprit even though it hasn't ever been proved 'beyond reasonable doubt' in a competent court.

Further, in context of Nepal a case involving a famous television presenter Ravi lammichhane who was accused of conspiring and abetting his co-worker to suicide based on a leaked video became a huge controversy and the courts and judges faced a huge pressure from the public outcry in giving decision in the matter. Thereafter, the court on its first hearing has directed that since the case is ongoing in a 'competent court of justice' any matters and evidence related to this case not be discussed in any sort of media including social media and other electronic medias. This shows the level of difficulties that the judiciary has been facing due to the media focusing on sensation and not making sense.

A noteworthy legal principle '*ei incumbit probatio qui dicit non qui negat*'- meaning, the burden of proof lies upon him who affirms not he who denies has been completely dismissed by the media. Instead, the one who has been accused shall have to keep proving their innocence to the society even after getting acquittal from the court. It doesn't really matter whether a suspect of a murder case has actually killed someone or not because the media will definitely murder the character of the person and snatch away the right of an accused to live a dignified life and this is worse than getting sanctioned legally. This not only affects their personal life but also affects the work life, social life and other diaspora of the individual's life.

The fundamental right to privacy and right against reputation assassination is brutally attacked.⁷ At times, these people simply do not have any choice and are compelled to give up on life as the society is just not ready to accept them. One wrong move by the media can completely destroy the mental health of an individual since their right to dignified life is on an edge after trial by media.

In a celebrated case of *R. v. Almon* (1765), it was established that strangers who are not parties to the case or the proceedings of the court can be punished for contempt of court if they scandalize the court with any false publication.⁸ It was held that such activities would hinder the process of administering justice and would raise serious questions on the honesty, impartiality and independence of the judges and judiciary as a whole. This anticipation has been turned into reality by the media today by not just scandalizing the courts but with every other reporting and investigation which causes irreparable loss to the accused and judiciary both.

At times there are cases which have to be dealt with careful consideration to legal technicalities which generally a lay person might not be able to understand. For instance in the complicated case of Arushi Talwar in India, the accused parents were released as the evidences didn't satisfy 'beyond reasonable doubt' that they were the murderers.⁹ No person can be convicted simply

⁷Universal Declaration of Human Rights, Art.12 UNGA Res 217 A(III) (Dec. 8, 1948); International Covenant on Civil and Political Rights (ICCPR), Art.19 999 U.N.T.S. 171(Dec. 16, 1966) .

⁸ Douglas Hay 'Contempt by Scandalizing the Court: A Political History on the First Hundred Years' (1987).

⁹ Dr. Rajesh Talwar and Another V. Central Bureau of Investigation (82) ACC 303 (2013).

based on suspicion and this is related to evidence related technicalities. However, due to excessive media publicity and manipulation this decision was heavily criticized without understanding why the court acquitted the accused. Such influence raises questions on the reliability of courts and also leads to contempt of court.

There are various guidelines and codes for conduct for media houses and journalists. Nevertheless, the media has not been able to follow it in action. There are many laws in action in every jurisdiction to make sure there is a balance in the kind of information that is disseminated to the public. However, growing technology and use of various new media like the internet and especially social media has increased the burden for both lawmakers and enforcers to specifically regulate media even more strictly. Media is an essential amenity for democracy but too much of everything can be harmful and that is exactly the effect of modern media on the judiciary. Therefore, the only solution that is visibly available is that the journalists and people in this field move towards ethical practice and respect rule of law in the coming days to build a just and equitable society.