

Role of Media in Making Public Policy on India's Criminal Justice System: A Study of News Reporting on Actor Salman Khan's Acquittal in A Murder Case

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Citation: Arulselvan S. Role of Media in Making Public Policy on India's Criminal Justice System: A Study of News Reporting on Actor Salman Khan's Acquittal in A Murder Case. *Global Media Journal*. 2016, 14:26 .

Abstract

It is widely assumed that media's role in a democratic polity is to provide transparency and accountability, and to raise the public awareness and to facilitate a forum for public discussion. Earlier studies have confirmed that the media can effectively set the public agenda by consistently featuring issues in news coverage. Media coverage of crime helps to set the agenda for the criminal justice system and reinforce support for punitive policies.

On December 10, 2015, Bombay High Court dismissed a trial court's conviction and acquitted popular Bollywood Actor Salman Khan of all charges in a 13 year long case related to his drunken drive over the people sleeping on a pavement, on the night of 28 September 2002 that resulted in killing of one person and injuring four others. Using the framework of agenda setting, the study analyses the news stories published in mass circulated Tamil and English Language newspapers on the reportage of this judgement. The study discusses the discourse of Tamil and English Language newspapers on this judgement and its contribution towards the making of public policy on criminal justice system in India.

Keywords: Media; Criminal justice; Public policy; Salman khan

Received: March 19, 2016; **Accepted:** June 15, 2016; **Published:** June 25, 2016

Introduction

The relationship between crime and mass media's perception about it are essential to formulate criminal justice system. Mass media play a crucial role in public policymaking and the media coverage of crime news stories helps to set the agenda and reinforce support for punitive policies.

Review of research literature suggests that there is an interchange between media representations of crime, criminal behaviour, and the public policy on criminal justice system. Crime stories are commonly presented as dramatic entertainment, and infrequently one can read an in-depth analysis of the legal, criminal justice, or societal problems that are concerned [1]. Once the media places its issues in prominent positions and set the agenda, the media subsequently primes audiences to believe that those issues merit more attention. Two notable studies that offer critique on representations of crime in the media, and their impact on public policy: R.

Surette's *Media, Crime and Justice*¹ and K. Beckett and T. Sasson's *The Politics of Injustice*². Media are the primary source of political information for most of the Indian citizens. Media's role in a democratic polity is to provide transparency and accountability, and to raise the public awareness and to facilitate a place for public discussion.

Two apprehensions about media representations of crime are: the 'respectable fear' [2] and that they are a means of 'social control' and discipline. The connection between representation of crime in the mass media and augmented fear has links to punitive attitudes. A significant study related to the fear and panic constructed is Stanley Cohen's research that studied the influence of the media in either creating or cultivating a moral panic. The concept of moral panic was articulated by Cohen in his study of the 'Mods and Rockers' phenomenon [3]. Mass media helps to maintain social order and police ideological boundaries,

¹ 2nd edn, Belmont: Wadsworth, 1998

² Thousand Oaks: Pine Forge, 2000

through demonizing offenders, the process that Cohen labelled the creation of 'moral panics'.

There is a long history of moral panics about the effects of exposure to popular media and cultural forms. There are two perceptions about the moral panics constructed by media: for conservative, the media glamorizes the crime and trivializes public insecurities; whereas for liberals, the media exaggerates the crime and produces moral panics to justify an authoritarian crime control policy.

The kinds of punishment given are subjective to the political climate of a society. It's often argued that the law aims to punish the guilty mind and not the individual. Punishment is used as a method of reducing the incidence of crime by deterring or preventing the repeat of offences.

Emile Durkheim [4] asserts that all societies have crime, since all societies involve a variation between that are allowed and that are outlawed. The outlawed acts are labelled as crime. Durkheim argued that crime is a natural social activity and 'an integral part of all healthy societies'. Human crimes are not punished too heavily because one person's injury does not threaten the entire society, stated Durkheim in one of his study.

Malinowski [5] believes that all the legal institutions are platforms for controlling illegal affairs, and for giving vent to the feelings of oppression and injustice unleashed against the individuals. Michel Foucault (1979) points out that by the eighteenth century the masses could sympathize with the accused and 'the people never felt closer to those who paid the penalty than in those rituals intended to show the horror of the crime and the invincibility of power exercised without moderation or restraint'.

Agenda setting role of media

Agenda-setting theory is concerned with how the media constructs representations of the world and in turn how this influences the people to see the world. Berelson, Lazarsfeld, and McPhee's [6] influential study on voting notes that media prioritize specific stories over others, or by airing a significant volume of news reports related to some policy domains, ignoring others. McCombs and Shaw's [7] Chapel Hill study concludes that the media can effectively set the public agenda by constantly and blatantly featuring a few issues in their news coverage. Cobb and Elder's [8] work focuses on the sources of the policy agenda, that is, the 'general set of issues that are communicated in a hierarchy of importance at a point in time'.

By covering news on one issue while ignoring other issues, the mass media draw attention to certain aspects of politics at the expense of others [9]. Legitimacy for governing is reliant on the consensus of the ruled, and it is believed that policymakers generally should not envision actions that are outside of the limits placed upon them they serve. Hence, public opinion is a legitimate consideration for policymakers when making decisions [10].

Soroka [3] suggests a typology making the difference between sensational, prominent and governmental issues. Sensational issues are manifest by dramatic events and thorough media coverage, difficult to ignore by politics. Prominent issues are those

where people and politicians have their personal experiences and media coverage has a moderate effect on policy agendas. Governmental issues are highly technical with very limited interest for the media or the public.

Kurt Lewin [11] pointed out that 'reality for the individual is determined by what is socially accepted as reality'. There are three arguments that are to be discussed from Lewin: 1. Media set the agenda and designed the significance of certain news, affecting Governments' decisions and policies, and it guides people's attitude and trust towards government. 2. Media agenda setting would shape the public perception about social issues that media set them as important. 3. Government and people's attention would be drawn by agenda setting of specific positions on economic news, and their attitudes might be transformed after then.

The media shapes societal perspectives on criminal justice

Studies show that the mass media shapes social perspectives of the criminal justice through molding public opinion, and public policy. Eamonn Carrabine [12] observes that the 24X7 round the clock news coverage of criminal issues contribute to the cultural climate of fear. In the process, media representations can negatively influence perceptions on crime-related issues, and interfere with the implementation of crime prevention policies. 'The representation of violent crime by the media leads to larger understanding of crime and justice that translates into public policies' [13]. Crime prevention practitioners emphasize the prominence of prevention strategies characterized by long-term action, and based on a solid diagnosis that takes into account the complexity of the crime. James C. Hackler [14] refers to the types of crimes disregarded by the media in Canada, such as white collar and environmental crimes. He points out the cautious absence of these crimes in the media is primarily due to the politicization of crime, which results in inaccurate perceptions on crime and inappropriate policy decisions, which results in ineffective crime control policies. Public attitudes towards crime and punishment play an acute role in constructing criminal justice policies [15]. Public confidence in the Criminal Justice System is critical for the effective functioning of justice [16]. Public attitudes on crime and punishment are shaped by the media [17]. Misconceptions of crime and punishment generated by the media create a lack of confidence in the Criminal Justice System. Consequently, the public demand harsher punishment for offenders [18].

According to Hayward and Young [19], the media and the public are always obsessed with crime. The crime news coverage ensures a ready audience and it has been a persistent theme in popular culture throughout the twentieth century. The advancement of a public policy begins with the recognition that a problem exists. The pre-policy stages are: issues formation, policy demands, and agenda formation. By entertaining people with crime by the media, newspapers sales figure rises up, but ultimately it distorts the public understanding of crime as a serious social problem [20]. The proportion of media content that is filled with crime stories depend on the definitions of crime used by a community. Richard Ericson and his colleagues studied 'the social deviance and how

journalists participate in defining and shaping it' [21]. Deviance refers to 'the behavior of a thing or person that strays from the normal organizational procedures and violations of common-sense knowledge'. Deviance is the defining characteristic of what journalists regard as newsworthy. The news media parallel the entertainment industries in their focus on stories of crime, and this is true with the reality television and other forms of infotainment [22]. Crime narratives and representations are a prominent part of the content of all mass media [23].

Methodology: With the backdrop of the above literature review and the theoretical framework evolved, this study aims to understand the contribution of Tamil and English Language newspapers, in shaping the public policy to the Indian criminal justice system, by analyzing the news stories related to the acquittal of Actor Salman Khan in the hit-and-run case. News reports, editorials and op-ed page news analysis appeared the Tamil and English Language newspapers (both online and offline) were the primary sources for analysis. The news stories, editorials and the opinion pages were analyzed and discussed qualitatively [24-30].

Case history of Salman Khan's hit-and-run case

Based on the news reports appeared in the popular Tamil and English language newspapers, the following sequence of events were compiled on the Salman Khan hit-and-run-case:

On September 28, 2002, Salman Khan's Toyota Land Cruiser (Registration No.MH 01DA32) crashed into the pavements at Bandra, killed one person and injured four others. Salman Khan's bodyguard, deputized by the Maharashtra State Police, Ravindra Patil, filed the First Information Report at the Bandra Police Station, without any delay. Police took the blood samples of Salman Khan and he was arrested by the Bandra police and booked him under provisions of Indian Penal Code (IPC), Motor Vehicles Act, 1988 and Bombay Prohibition Act, 1949. He was granted bail. In October 2002, Mumbai Police invoke section 302-II of IPC, (culpable homicide not amounting to murder), which would attract a punishment of 10 years of imprisonment, if convicted [31-35].

In March 2003, Salman Khan challenged the application of IPC 302-II, in Mumbai Sessions court. In May 2003, the Sessions court rejects his plea, asks Magistrate court to frame charges against him. In June 2003, Salman Khan moves Bombay High Court, which felt that section 302-II of the IPC will not be applicable to the case.

Subsequently, in October 2003, the Maharashtra Government challenged Bombay High Court order in Supreme Court. In December 2003 the Supreme Court ruled that the magistrate court may decide whether 302-II could be applied or not. In October 2006 the Magistrate court framed charges against Salman Khan. In May 2007, chemical analysis report suggested that Salman Khan was drunk on the date on which the accident took place [36-40].

In October 2007, Salman Khan's bodyguard Ravindra Patil died and the cause of death was declared as Tuberculosis infection. After four years, in October 2011 the Prosecution demands Salman

Khan must be tried under harsher sections. On March 25, 2012 the Prosecution closes evidence after examining 24 witnesses. On December 23, 2013 the Additional Chief Metropolitan Magistrate V.S. Patil slaps the charge of 'culpable homicide not amounting to murder' on him and referred the case to sessions court for trial as Magistrate's court does not have powers to try this kind of offences.

On November 24, 2014 the Sessions court started retrial of Salman Khan. On March 27, 2015 Salman Khan's statement was recorded under section 313 of Cr.PC by Additional Sessions Judge D.W. Deshpande. On March 28, 2014 Salman Khan's family driver Ashok Singh gave testimony in the trial court owning the responsibility of accident.

On May 6 2015 the Mumbai Sessions court sentenced Salman Khan to five years rigorous imprisonment. Salman Khan got two days interim bail granted by Bombay High Court. On May 8, 2015 the Bombay High Court admitted a plea against conviction. On September 21, 2015 Justice A R Joshi commences daily hearing of Salman Khan's appeal and on November 17, 2015 the defense counsel Amit Desai wraps up the case.

On December 4 2015, Justice A.R. Joshi posted appeal for dictation of verdict from, December 7, 2015. On December 10, 2015 Salman Khan was acquitted of all charges in the case (Criminal Appeal No. 572 of 2015)³: Justice A.R. Joshi, in his judgment said:

"The order by the Sessions Court [convicting Salman for 5 years of rigorous imprisonment] has been quashed and set aside. The bail bonds stand cancelled, all fine amounts paid by the appellant [Khan] shall be refunded to him"⁴ [41-45].

English language newspapers' reporting on the judgement

Most of the English language newspapers published in India critically reviewed the December 10, 2015 judgment, starting from pointing out the loopholes in the prosecution, the criticism went up to the level of calling it failure of judicial system and the diminishing of the majesty of law. *DNA* in its editorial commented that the nation has missed an opportunity to build significant deterrence against drunken driving and hit-and-run incidents.

".....from being touted as a high-profile case which would build significant deterrence against drunken driving and hit-and-run incidents, it turns out that Salman Khan was not drunk and was not driving the Toyota Land Cruiser that killed one labourer and injured four others sleeping on the pavement"⁵. Anil Dharkar, in his news analysis appeared in the Indian Express, pointed out the loopholes in the prosecution and concluded that the Indian justice system is the loser in this case. "...All this does not absolve Mumbai Police or the prosecution. Justice Joshi did point out several examples of a botched investigation: They couldn't find the cop, now retired, who took Salman's blood sample to the 3 Judgment copy available online at: <http://bombayhighcourt.nic.in/libweb/recentinfo/Salman.pdf>

⁴ <http://www.thehindu.com/news/cities/mumbai/hc-asks-salman-to-be-present-in-court-during-verdict/article7969697.ece?ref=relatedNews>

⁵ <http://www.dnaindia.com/analysis/editorial-dnaedit-let-s-face-it-the-state-messed-up-the-salman-khan-hit-and-run-case-2154562>

lab, and the prosecution did not call Kamaal Khan as a witness. Surely the fact that the defence didn't summon Kamaal as their witness is clear indication that his testimony would have favoured the prosecution, perhaps confirming that Salman was driving the car? And so it goes: Ineptitude on one side, wrong interpretation on the other. The beneficiary: Salman Khan. The loser: Our justice system"⁶.

The Economic Times in its editorial pointed out that "...this particular verdict makes anyone who should be fearful of the law be more fearful of not being well connected as insurance"⁷ *The Free Press Journal* in its editorial raised the same issue of missing an opportunity to hold it as a lesson on drunken drive:

"...we should have thought that the State would make a test case of Salman Khan's drunken driving and hold it as a lesson to every citizen who is prone to drive under the influence of liquor. But, it turns out that throughout, the police and the prosecution were entirely lackadaisical in their approach"⁸.

The editorial also has warned 'that the majesty of law definitely diminished with the acquittal of Salman Khan'... and concluded with a firm note that 'without the rule of law, anarchy awaits in the wings. Let that be the first lesson of Salman Khan's acquittal'.

The *Mid-Day* in its Editorial has also made it clear that the nation has lost an opportunity to benefit out of a high profile case on drunken drive:

The Salman Khan hit-and-run trial had the potential to serve as an example to deter drunk drivers across the nation. Instead, it has so far only served as an example of different ways to bungle an investigation⁹.

The *Mid-Day* has also pointed out in its editorial that the glaring loopholes in the probe, as pointed out by the Judge, which had helped Salman Khan walk free.

The Hindu in its news report carried the statement of the Public Prosecutor, Sandeep Shinde, who has apprehension at the tone of the judgment: "...the fact remains that an innocent man was killed and four others were injured. Who is responsible for that? What kind of message are we sending out to society? Are we saying any high-profile person can hijack the system?"¹⁰

The *Hindu*, on its editorial, "The Day of the Citizen", appeared on 7 May 2015, published soon after the Mumbai Sessions Court Judgment pronounced that 'deaths caused by drivers under the influence of alcohol should attract the charge of culpable homicide, and not merely that of negligent driving'¹¹. In the same editorial *The Hindu* also pointed out that the Supreme Court directions to the trial courts that the negligent and rash driving should not give the benefit of doubt to the drunken drive cases:

⁶ <http://indianexpress.com/article/opinion/columns/and-justice-lost/>

⁷ <http://blogs.economictimes.indiatimes.com/et-editorials/salman-khans-acquittal-by-bombay-hc-was-not-an-anomaly/>

⁸ <http://www.freepressjournal.in/editorial-everyone-complicit-in-salmans-acquittal/733311>

⁹ <http://www.mid-day.com/articles/mid-day-editorial-will-cops-ever-learn-from-mistakes/16769167>

¹⁰ "Salman wins appeal, walks free", reported by Sonam Saigal, *The Hindu*, Mumbai edition, dated 10 December 2015.

¹¹ <http://www.thehindu.com/opinion/editorial/2002-salman-hitandrun-case-the-day-of-the-citizen/article7177624.ece>

".....though the Supreme Court upheld the three-year sentence given [in Alistair Pereira case] by the Bombay High Court, it said that was too "lenient" a punishment for an offence of culpable homicide not amounting to murder. The Supreme Court indicated that trial courts should not give the benefit of the doubt to those driving drunk and instead convict them under 304 II (punishable with 10 years imprisonment) than the lesser offence of 304 A that provides for a jail term of two years for negligent and rash driving".

The Hindu in one of its op-ed page analysis jointly written by R.K.Raghavan, a former CBI Director, and D. Sivanandhan, a former Commissioner of Police, Mumbai, has critiqued the judgment elaborately:

"...we are intrigued why the testimony of the principal witness-PSO Patil-who filed the FIR within hours of the incident, did not carry enough weight with the High Court....PSO Patil had deposed unequivocally, before the investigating officer and the Metropolitan Magistrate who conducted the initial trial, about how Mr. Khan was guilty of rash and negligent driving. To dismiss his version of the incident as inconsistent or unreliable seems grossly unfair to the prosecution, especially when there is nothing to suggest that he was motivated....Mr. Khan has only been given the benefit of the doubt, and not a clean acquittal"¹².

Tamil language newspapers' reporting on the judgement

This study further analyses the Tamil Language Newspaper reports on the December 10 2015 judgment of Bombay High Court on Salman Khan's hit-and-run case. Headlines of the news reports related to this judgment appeared in the highly circulated Tamil Language newspapers and the BBC Tamil Radio, and an online news magazine are given below, as translated from Tamil to English:

1. Actor Salman Khan Acquitted in Car Hit and Murder Case: High Court Pronounces Sensational Verdict¹³
2. Drunken Driving Case on One Killed: Actor Salman Khan Acquitted¹⁴.
3. Actor Salman Khan Acquitted In A Platformer Murder Case.¹⁵
4. Car Drive Accident Case In Mumbai: Salman Khan Acquitted¹⁶

¹² R. K. Raghavan, D. Sivanandhan, "The case against Salman Khan", *The Hindu*, dated 14 December 2015, accessed online at: <http://www.thehindu.com/opinion/op-ed/the-case-against-salman-khan/article7983569.ece>

¹³ Actor Salman Khan in a case of car-crash victims released: a judgment of High Court http://www.dinakaran.com/News_Detail.asp?Nid=183685

¹⁴ One of the victims of drunk driving the car in the case of actor Salman Khan's release <http://makkalkural.net/news/blog/2015/12/10/>

¹⁵ Actor Salman Khan released nataipataivaciyaik murder http://www.bbc.com/tamil/india/2015/12/151210_salmankhan

¹⁶ Drove the car accident in the Mumbai case in which actor Salman Khan released <http://www.dailythanthi.com/News/CinemaNews/2015/12/10141040/Salman-Khan-acquitted-of-all-charges-in-2002-hitandrun.vpf>

5. Actor Salman Khan Acquitted: Case related to One Killed Due To Bad Car Drive¹⁷
6. Case On Drunken Car Drive related Accident: High Court Acquitted Salman Khan¹⁸
7. Drunken Drive Case: Salman Acquitted.¹⁹
8. Car Accident Case: 5 years Imprisonment For Actor Salman Khan²⁰
9. Drunken Drive And Murder Case: Salman Khan Acquitted²¹

The quality of reporting in Tamil Newspapers, barring a couple of cases, generally varies significantly from the English language newspapers published in India. While most of the English language newspapers have squarely critiqued the judgment and pointed out the failure of prosecution, the Tamil press has reported this story as if it was an accident of negligent driving. The highly circulated newspapers such as *Daily Thanthi*, *Dinakaran*, *The Hindu Tamil* and *Dinamalar* have reported it just like a road accident where, as if someone was hit during the drive. *Dinamani*, *BBC Tamil*, and *Ippodhu.com* (an online news magazine) have reported that the actor was charged in a murder case where he killed a person sleeping on a platform on a drunken drive and he has been acquitted in the case [45-48].

¹⁷ Actor Salman Khan lifts , car lift in case of causing death
<http://www.dinamani.com/india/2015/12/11/>

¹⁸ Drunk driving case: Salman freed

¹⁹ http://www.dinamalar.com/news_detail.asp?id=1406823

²⁰ <http://tamil.chennaionline.com/cinema/news/newsitem.aspx?NEWSID=5b95d101-bd49-4ff0-bd52-b148c58541c4&CATEGORYNAME=TFILM>

²¹ <http://ippodhu.com/>

Generally, Tamil news reports have not attempted to explain the issues like culpable homicide amounting to murder, or the Supreme Court's direction to the trial court on not passing the benefit of doubt to those driving drunk, or the difference between driving drunk and negligent and rash driving etc. The Tamil language newspapers have also not attempted to discuss about the issues related to conviction under the Indian Penal Code 304 II, where 10 years imprisonment for driving drunk is possible, or under 304 A that provides for imprisonment of two years for negligent and rash driving, when convicted.

English Language Newspapers publish news analysis in the op-ed pages that helps the readers to understand the nuances and niceties of the issues in hand. Particularly *the Hindu's* different perspectives on the judgment is helpful to the reader to make an informed opinion on this issue. But in Tamil language newspapers, the lack of in-depth analysis of the issue to make the readers understand the issue and to have different perspectives to evolve an opinion has created a vacuum in public policy making.

Conclusion

The analysis on Salman Khan hit-and-run-case related judgment shows that there is a lack of in-depth analysis of the issues related to the legal, criminal justice in the Tamil language newspapers. The Tamil language media invariably glamorizes the crime and trivializes issues related to the criminal justice system. In order to avoid an authoritarian crime control policy, the Tamil Language newspaper should facilitate a professional way of approaching crime reporting and thereby contributing to the national criminal justice policies.

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