

## HUMAN RIGHTS & COMMON MAN: A CRITICAL STUDY OF FREEDOM OF SPEECH & EXPRESSION WITH SPECIAL REFERENCE TO MEDIA TRIAL

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### ABSTRACT

*The very essence of democracy is not just its voting process, but the lived freedom of citizens - above all, freedom of speech, of dissent, of expression. Article 19(1)(a) of the Indian Constitution protects the right of all citizens to freedom of speech and expression, the very basis of participatory democracy and an open public space. But in modern times, this freedom is caught in the maze of media hype, trial by media, and image management -where truth is a negotiable commodity and justice is a show. The current paper explores the essential nexus between human rights and media discourse, particularly the manner in which the common man - the accused, the misconceived, or the gagged - suffers the most from uncontrolled media trials. This argument underscores the two-sided aspect of media freedom: while it is an essential watchdog, its unfettered exercise may also infringe presumption of innocence, right to a fair trial, and dignity. The study also examines judicial responses, legislative loopholes, and institutional apathy in curbing the excesses of trial by media, and calls for an even system in which freedom of the press coexists with human dignity and due process.*

**KEYWORDS:** Freedom of Speech, Human Rights, Media Trial, Justice, Common Man, Fair Trial, Press Ethics, Article 19, Judicial Intervention.

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### Introduction

Freedom of speech and expression is the hallmark of any democratic country. It not only facilitates person-to-person empowerment and growth, but it also provides the necessary tool for keeping the ruling elite in check. In India, this right is secured under Article 19(1)(a) of the Constitution - a well-drafted assurance that every citizen can speak, write, express, and communicate ideas without undue restriction. However, this freedom is not absolute; it is always subject to reasonable restrictions under Article 19(2) in the interest of sovereignty, integrity, public order, decency, and the administration of justice.

The emergence of the media as the fourth estate - with the unprecedented ability to influence popular opinion - has complicated the argument on freedom of expression. Though the role of the media within a democratic order is universally celebrated as that of a watchdog, a narrator, and megaphone for the periphery voices, its unbridled power has begun to generate increasing concerns. Trials of the media have become a concerning trend in the past few years - where individuals are tried and convicted in the court of public opinion long before a verdict is reached by the law.

The current research counters this emergent tension between the individual's rights and the collective narrative, particularly in terms of how media trials intrude on the human rights of the common citizen. Through this, it seeks to examine a very disquieting question: Can a democracy permit the media to serve as prosecutor, judge, and jury simultaneously? More importantly, what happens to the poor, the mute, and the underrepresented when put through this theatre of public shame?

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In the pages that follow, there is an attempt to untangle the legal, moral, and social dimensions of this war - not through the eyes of media moguls and legal philosophers alone, but by making the lived experience of the common man: the wrongly accused, the libeled, and the forgotten, the reference point.

### **Legal Framework of Free Speech in India**

The Indian Constitution, through Article 19(1)(a), guarantees freedom of speech and expression to all citizens. This means freedom to convey ideas through words spoken, written, print, pictures, or some other form. This freedom is, however, not absolute, and the Constitution, through Article 19(2), authorizes the State to make provisions for reasonable restrictions on the grounds of sovereignty, integrity, security of the State, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, or incitement to an offence.

The courts, through milestone judgments, have established the extent of this right. In *Romesh Thappar v. State of Madras* (1950), the Supreme Court held that freedom of speech and expression is the cornerstone of all democratic governments. Likewise, in *Bennett Coleman v. Union of India* (1973), the Court held that freedom of the press is an essential part of Article 19(1)(a), thus equating the extent of this right beyond individual rights to institutional ethos.

But the real tension is in balancing this freedom with other Constitutional values such as right to reputation, right to fair trial (by virtue of Article 21), and right to equality before the law (Article 14). In the electronic age of today, when information moves quicker than judicial process, this balancing is precarious. Media trials, and especially pre-emptive character assassination trials, infringe on this balancing by influencing public opinion and biasing the judicial process.

The lack of a particular legal provision or legislation to regulate trial by media only makes things worse. Although the Contempt of Courts Act, 1971 and Press Council of India norms provide some redressal, they are short of preventing harm to reputation or pre-adjudication neutrality. The aam aadmi trapped in this web is collateral damage - deprived of privacy, dignity, and the presumption of innocence.

The issue is- how do we preserve freedom of speech without lowering it to a license to defame, especially when the accused do not have an equal platform to defend themselves to the nation?

### **Media Trial: Concept, Evolution & Critique**

The 'media trial' is a term applied to the phenomenon where the media, especially the visual and internet media, assume the roles of investigating agencies, prosecutors, and judges, usually delivering verdicts on sensational cases much before the court does. Such a parallel trial, carried out through news headlines, panel discussions, leaked charge-sheets, and selective visuals, has become a major and spectacular mode of public verdict, particularly in democracies with an active culture of the press.

Historically, the media have been the trigger of India's political awakening. From colonial resistance to revelations of post-independence corruption, the press has been the vehicle of collective conscience and accountability. But with the emergence of 24x7 news cycles, TRP-based sensationalism, and unregulated digital space, the margin between journalistic responsibility and public execution has dangerously narrowed.

The transition from reporting to comment, from fact to rumor, and from investigation to entertainment is a disturbing setback in media ethics. Cases like the Aarushi-Hemraj double murder, Sushant Singh Rajput's death, or even communal violence demonstrate how quickly the media can build narratives, influence public opinion, and stigmatize individuals regardless of court verdicts.

Critics argue that media trials erode the right to a fair trial, contaminate pools of witnesses, and erode the impartiality of the judicial process. Additionally, they disproportionately disadvantage those who possess no social capital - the common citizen, who cannot afford lawyers, PR machinery, or control of narrative. Trial by media, in such a situation, is trial by inequality.

The ethical transgression is also compounded when the media becomes aligned with political interests, corporate interests, or social interests, thus lowering justice to the level of a spectacle. Without mandatory fact-checking, editorial accountability, and regulatory oversight, loss of reputation is swift and beyond repair - and typically, irreversible.

Therefore, media trials are not just an excess of freedom of expression but an imbalance of the framework in the ecosystem of the justice system, wherein the microphone of the media is louder than the voice of the victim or the accused.

### **Impact on Human Rights and the Common Man**

At the very heart of all legal systems is the presumption of innocence of all individuals until they are proven guilty. Media trials, however, reverse this practice on its head - charging individuals as criminals, conspirators, or traitors, long before any court proceeding is concluded. This perversion attacks the very heart of human dignity, right to a fair trial, and freedom from torture, cruel, inhuman, and degrading treatment, which are all guaranteed under Articles 14, 19, and 21 of the Constitution and enshrined in international human rights instruments such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966).

The impact of media trials on the common citizen is disastrous and, in most cases, irreparable. Without the protection of institutions, funding, or political patronage, the common citizen is left to endure character assassination, social boycott, and economic devastation based on unproved allegations sensationalized by media houses for the sake of ratings. In most cases, the family of the accused is left to bear public shame, loss of livelihood, and psychological trauma, leading to consequences as drastic as suicide, social boycott, or life-long stigma.

Besides that, media trials breach the right to privacy and reduce individuals' lives to public spectacle. Information that is supposed to be confidential - medical history, private letters, unsubstantiated rumors - leaks and is gossiped about, breaching the very essence of personal dignity and autonomy.

The connection between media and public prejudice also taints the integrity of judicial processes. Judges, training notwithstanding, are not isolated professionals. Media interpretations can penetrate the judicial mind, making impartial judgment an ideal and not a reachable reality. The damage is escalated when investigative departments, under the pressure of the media and politicians, rush into investigation, falsify evidence, or indulge in selective leaks and thereby create suspicion in the public sphere outside of the court.

Ultimately, media trials make the search for the truth a spectacle competition, where the voice, dignity, and constitutional rights of the ordinary man are collateral in the public consumption theatre.

### **Judicial Reactions to Media Trial**

Realizing that unbridled media commentary threatens, the Indian judiciary has, in the course of time, sought to demarcate limits between freedom of speech and fair trial right. The courts have, at all times, urged that freedom of the press, while being sacrosanct, cannot be at the cost of judicial sanctity or prejudice the administration of justice.

In *Sahara India Real Estate Corporation v. SEBI* (2012), the Supreme Court recognized the chilling effect of pre-judicial media reporting and allowed the judiciary to issue interim postponement orders to safeguard fair trial rights. Likewise, in *R.K. Anand v. Registrar, Delhi High Court* (2009), the Supreme Court condemned media intrusion into the judicial process and cautioned against the "usurpation of judicial functions by the press."

The judiciary has also employed the Contempt of Courts Act, 1971, under Section 2(c), which punishes any publication intended to bring scandal or disrespect upon the courts or to bring into disrepute the proceedings of the courts. Where media trials have been observed to violate sub judice values, the judiciary has not hesitated to issue gag orders, advisories, or notices of contempt.

Even with these initiatives, enforcement is patchy and highly judicially discretionary. The lack of a broad media regulation act or a special court to oversee pre-trial reporting puts a check on the judiciary to avoid causing irreparable harm to the reputation and rights of the common citizen.

Furthermore, the principle of open justice - that justice must be seen - will be likely in tension with attempts to restrict media coverage. In finding a balance between these competing constitutional values, courts have to walk a delicate tightrope, on which restraint is as vital as protection.

Finally, while court rulings provide some protection against media excesses, they are still reactive and not preventive. The common man, on the other hand, remains under the heel of unseen judgments passed not in court of law, but in the court of public hysteria.

### **Regulatory Mechanisms and Need for Reform**

In the current Indian context, media conduct regulation - i.e., in the context of current trials - is overwhelmingly reliant on self-regulatory codes, occasional legislation, and judicial guidelines, and not on compulsory statutory regimes. Bodies like the Press Council of India (PCI), although entrusted with the

role of enforcing journalism ethics, do not possess the power of sanctions beyond moral disapproval. Lack of power to condemn unethical reporting makes them ineffective in preventing the ill effects of media trials.

While the Cable Television Networks (Regulation) Act, 1995, and the Information Technology Act, 2000, do make provision for regulation of content, they do not do justice to issues of pre-judicial reporting or media intrusiveness in criminal investigations. Furthermore, the spread of social media platforms - functioning to a significant degree outside traditional regulatory paradigms - has contributed to the malaise, and we are left with a scenario in which viral narratives have a propensity to overwhelm verifiable fact.

The lack of explicit law governing the media trial and reporting by courts jeopardizes constitutionally rooted rights irretrievably for those lacking economic resources to deny defamation or invasion of privacy through protracted, costly procedures.

#### **A Robust Regime of Regulation shall therefore include**

- Statutory Guidelines: Enacting precise guidelines of allowable limits of media coverage of sub judice cases to protect the right to a fair trial.
- Independent Oversight Body: In parallel to the PCI, an independent quasi-judicial body with real powers of enforcement to investigate and punish instances of trial by media.
- Court Reporting Code of Conduct: Compulsory training and certification of reporters and journalists who are assigned legal beats for thorough comprehension of judiciary ethics.
- Strict Data Privacy Regulations: Protection against improper disclosure of personal data, including medical history, witness details, and confidential proceedings.
- Social Media Regulation: Mechanisms of accountability for online platforms publishing discriminatory content in the name of free speech.

Without such change, the common citizen's battle for dignity, already fought on limited resources amidst the labyrinth of law and media, becomes a losing fight with profound, uncontrolled narratives.

#### **Comparative Perspective: World Standards on Media Trials**

Under democratic governments, the media's role in judicial proceedings has been under intense scholarly and legislative scrutiny over extended periods of time. Various nations have also made concurrent efforts at framing measures of control so that freedom of the press never becomes a sacrifice for the right to a fair trial - an integral human right enshrined under Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

In the US, although the First Amendment strongly protects freedom of the press and free speech, the courts use gag orders, change of venue, sequestration of the jury, and postponing the trial to counteract the prejudice created by the press. The Sheppard v. Maxwell case of 1966 put forth the principle that the judges have to make positive efforts to safeguard proceedings from intrusive media, or the trial will be made inherently unfair.

In the United Kingdom, media reporting is governed by strict rules of sub judice. Under the Contempt of Court Act, 1981, any publication that results in a real danger of serious prejudice or interference with ongoing proceedings in court can lead to punishment. The media must be held in check once formal charges have been laid, so that reporting does not hinder judicial impartiality.

Similarly, Australia employs a mix of common law contempt rules and statutory provisions in regulating trial-related media reporting. In serious crime cases, suppression orders are used to ban reporting of certain particulars that would compromise jury impartiality.

What these comparative models reveal is that freedom of the press and the right to a fair trial are not incompatible but co-constitutive. Democratic maturity is attained by striking a balance wherein truth-seeking journalism does not devolve into trial by propaganda.

India, despite having one of the world's most successful press communities, has no overarching legislative framework that balances these competing rights. Its failure disproportionately affects the common man, whose message is likely to be drowned in the din of manufactured outrage and media frenzy.

Thus, comparative experience can tell us a lot: regulation is not free speech's enemy, but it preserves it from deteriorating into tyranny of narratives.

### Recommendations and the Way Forward

To restore the delicate balance between the freedom of expression and the right to a fair trial, and especially in the media trials, multi-dimensional legal, institutional, and societal reforms must be put in place. The following are suggested, with proper respect for the primacy of human dignity, judicial impartiality, and democratic accountability:

- **Implementation of an Integrated Media Law:** A particular law regulating media conduct in the sub judice context is necessary. The law should identify prohibited practices (such as prejudicial reporting, speculative accusations, and public denigration) and provide graded punishments, e.g., fines, mandatory apologies, or suspension of broadcasting licenses for a limited time.
- **Strengthening the Press Council of India:** The PCI must be endowed with quasi-judicial powers to investigate violations, call defaulting media outlets, and impose remedial actions. Its current advisory role must be changed to an enforcement agency.
- **Judicial Sensitization and Protective Mechanisms:** Judicial officials should also be trained to identify and address media-created prejudices in advance. Gag orders, in-camera hearings, and jury protection (where possible) have to be employed in sensitive matters at the earliest.
- **Public Awareness and Media Literacy Campaigns:** Citizens must be educated to distinguish between investigative journalism and media sensationalism. Media literacy initiatives at school and college levels can foster a discerning audience less vulnerable to trial by media.
- **Self-Regulation by Media Houses:** Large media organizations should adopt and impose ethical guidelines on reporting the courts, including the presumption of innocence, verification of sources, and respect for sub judice conventions. Voluntary compliance can complement legislation.
- **Social Media Accountability Framework:** Due to the virality of misinformation and discrimination on social media, intermediary regulations must incorporate accountability for platforms to delete discriminatory content as soon as it has been flagged by capable authorities.

A holistic approach calls upon the judiciary, legislature, media, and civil society to march together not to stifle free speech but to ensure freedom works for justice, not against it. Only thus can the faith of the common man in both media integrity and judicial impartiality be restored meaningfully.

### Conclusion

Freedom of speech and expression in a democracy is both sword and shield - it protects individual freedom and provokes collective action. But if freedom of expression is employed as a sword in the guise of runaway media trials, then it dismantles the very pillars on which it is sought to be erected: justice, fairness, and human dignity. The research indicates that while media is an essential pillar in a democratic nation, its unchecked use of public space to pre-judge, demonize, and stigmatize individuals - more the voiceless, vulnerable, and common citizen - is a gross infringement of human rights. Media trials, by altering the trajectory of judicial stories, infringe the right of presumption of innocence of the accused, and cause them irreparable social, emotional, and economic harm. Courtroom measures, laudable though they be, are still inadequate without a legislative framework overall. Comparative world experience shows that the freedom of the press can coexist with court integrity without attacking either. Thus, the cry of the times is to reclaim the moral mission of free speech - not as an instrument of public prosecution, but as a means of informed, wise, and compassionate conversation. The man in the street must be protected from the absolutism of unbridled narrative; his right to respect must be given precedence over the media's boundless appetite for the instant and the sensational. Only by creating a healthy and ethical system in which rights are balanced by responsibilities can we make democracy not only survive but thrive -for all, and not merely for those with the biggest megaphones.

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