

# CONSTITUTIONAL EXPECTATIONS VIS A VIS FREEDOM OF SPEECH AND EXPRESSION: A REGULATORY TIGHTROPE

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## **Abstract**

The influence of broadcast and print media on a person's reputation by instilling a widespread sense of guilt or innocence before, or after a court of law judgment was referred to as a "trial by media" in the early decades of the twenty-first century. This term was coined in the early decades of the twentieth century. The ordinary guy has been accelerated by the media, which has given them a voice. When a significant subject is presented before even the court, the public is likely to become more interested. The public is constantly looking for interesting news, so the media, including publications, broadcast networks, and news websites, keep publishing their accounts of history. Investigative journalism is a legal practice in India. There have been numerous examples in recent years where the media judged a perpetrator's trial and gave a verdict in front of the court. The Supreme Court stated that journalism and the judiciary are separate bodies with separate duties that do not overlap. One could never, and hence cannot, rely on the other to fulfill his or her responsibilities. It was suggested that the journalist should stick to their profession of journalism rather than operating as a specialized organization for the court. This research reveals how the biased character of some media coverage renders freedom of expression a barrier to the rule of law. It is necessary to strike a balance between the right of the victim to a fair trial and the freedom of the press. As a result, the media possesses great power that can subtly influence a case. The issue is not with the media uncovering societal wrongdoings. The issue occurs when they exceed the privileges granted to them and do actions that they should not. The fine line between "innocent until proven guilty" and "guilt beyond a reasonable doubt" is readily crossed, jeopardizing a trial. To avoid media trials eroding people's civil rights, steps must be taken, such as providing a clear picture of the media's duties and responsibilities and empowering courts to punish those who blatantly disobey them.

**Keywords:** Media trial, Freedom of Speech And Expression, biasness, Misuse by media houses

## **Introduction**

There are numerous definitions of freedom. Furthermore, from history to the present day, the majority of the country has sought to suppress the idea of 'Freedom.' Freedom's faces, such as liberty,

equality, justice, expression, and so on, have been insuring its success for thousands of years. Any change in the world occurs as a result of a man's ability to think critically. Freedom is more than a term; it is a way of expressing one's desire to express ideas that arise from a common man's cognitive process. Almost every nation divides freedom of speech and expression into two parts: first, to offer citizens powers and rights, and second, to restrict it in the interest of state sovereignty and integrity. Indian people have the right to free speech and expression under Article 19 (1) (a). Article 19(2), on the other hand, specifies acceptable constraints on Article 19 (1) (a), which defends it whenever people's freedom is threatened. Before having the freedom to speak, one must have the freedom to think, because the development of one's thought process will provide the truthful wisdom needed to use the correct sense of freedom of speech and expression. Because of so many spiteful and defamatory words recorded in the public realm, freedom of speech and expression has fallen into disuse. It is frequently used to deceive the general public. After Article 21, freedom of speech and expression is by far the most crucial right. However, at this time, it may be claimed that Article 21's validity is predicated on freedom of speech (SOMANI, 2022). In past years, the media has taken to identifying and naming the suspect or accused to increase the story's sensationalism and monetary value. The goal of this practice is to generate more advertising revenue. Photos and a wide variety of other resources (for instance, interviews) are created and shown alongside the reactions of the general public. When big names and personalities are involved, the issue is brought to light in a much clearer light than it would have been otherwise. In many cases, media coverage can sway public opinion in one direction or the other. As a result, a balance must be struck between the right to freedom of expression and the right to a fair trial guaranteed by the Constitution (Srivastava)

### **Misuse of freedom of speech and expression by media houses**

The Supreme Court outlined the law on freedom of speech and expression under Article 19(1) (a) as limited by Article 19(1) (b) **in The Secretary, Ministry of Information and Broadcasting** (seceretary ,minister of information and broadcasting v. cricket association of bengal and another, 1995) "The right to get and publish information is included in the freedom of speech and expression. As a result, the freedom to communicate encompasses the ability to communicate in every accessible medium, whether print, electronic, or audiovisual, such as advertisements, movies, articles, speeches, and so on. As a result, press freedom is included in freedom of speech and expression. The press seems to have been a useful tool in bringing to light numerous topics that would otherwise go unnoticed .Otherwise, you will go ignored. One example is The Tribune's coverage of how Aadhaar data is used.According to open magazine's findings, a billion Indians might be reached for as low as Rs. 500.The Caravan's reporting on the Nira Radia tapes, Indian Express's human trafficking exposé, and Nira Radia's tapes

Justice Loya, who presided over the Sohrabuddin trial, died. The media, on the other hand, does not exist or function in a vacuum. The Corporate Power Monitor, a study conducted in India by Reporters Beyond Borders and Data Leads, a Delhi-based digital media company, indicated that Indian media ownership is concentrated in the hands of a few. The influence of the proprietors of media outlets' economic and social interests and inclinations on the reporting of issues cannot be contested. There have been various examples of the media abusing its mostly unrestricted freedom and widespread reach to publish/broadcast information that is illegal in specific circumstances and frustrates legal rights. In criminal trials, the media frequently disregards the rights of the accused, which are established in the Indian Constitution and on which the judicial system is founded. This not only affects the accused and his or her family, but it also obstructs the dispensation of justice by applying undue influence and influence on the judges who are making a decision in a specific case. A reiteration of some of an accused's basic rights will make it abundantly evident that a media trial dismisses many of these rights and proceeds to render a verdict nonetheless. The presumption of innocence in India's criminal justice system is based on the principle of procedural fairness unless proven guilty. The opposite is true in media trials. Until the accused is proven innocent, he or she is guilty. The right to a fair trial by a judge who is unbiased, independent, and competent is an essential

component of the right to life and liberty. Everyone, including the accused, has the right to be treated equally in the eyes of the law (lal). The Supreme Court declared in the case of **Rajendra Jawanmal Gandhi**, (State of Maharashtra v. Rajendra Jawanmal Gandhi, 1997) that a trial by electronic media, press, or public agitation is contrary to the rule of law and might result in a miscarriage of justice.

### **Businessmen's misuse of media houses (corporate world)**

Companies want to make money; the media has the power to influence profits, thus businesses will aim to persuade that power. A paranoia is tethered to this logic: "The media is damaging and uninformed," according to a not-uncommon executive opinion reported in a recent business book (GREEN, n.d.). Fake news may appear to be fresh, but the platform on which it is delivered is the only thing that is. Propaganda has been for ages, and the use internet is just the most recent medium to be used to spread lies and distortions. But media houses have been used by them for quite some time in this motivation. Nearly every single day in public conversation, the term "mainstream media" is utilised. It is so widely used that it has its own acronym: MSM. People are willing to hear about conventional media for years to come, given the current trend in which independent news outlets and standard media sources are constantly at odds. Mainstream media, as the name implies, is found everywhere and includes television, print, radio, and, of course, the internet in the area of digital publications.

The Walt Disney Company controls the ABC television networks, which have over 200 affiliate networks in almost every TV market in the United States. Viacom and CBS were were part of the same firm, but they split up in 2005. What's more remarkable is that they're both owned by the same holding company: Sumner Redstone's National Amusements. Comedy Central, Nickelodeon, VH1, MTV, and a slew of other networks are all owned by Viacom. CBS is the most viewed network in the United States, with a viewership of more than 100 million homes. These corporations control the vast bulk of the country's and, by extension, the world's popular media. Mainstream media is made up of a small number of firms that control the most prominent media networks and, as a result, command the most viewers. MSM also includes periodicals such as the New York Times and the Washington Post, as well as international networks such as the BBC and Sky. These platforms and publications collectively serve the vast majority of the people. They have complete influence over what the majority of people hear, see, and read. As a result, several critics have compared them to marionettes and doubted their objectivity in relaying the truth (marco, 2018).

### **The influence of politics on the media**

To properly comprehend media, we need to grasp the political environment in which they function. Control of information/Media by the state is a common feature of authoritarian states. Democratic nations, on the other hand, take pleasure in safeguarding press freedom and freedom of expression. Although the media in such nations is nonetheless regulated by the government, they are usually granted far more freedom to function independently. In some democratic democracies, however, the media is still heavily dominated by a small number of powerful interests: commercial enterprises. In those circumstances, corporate media hegemony, rather than government control, is the most pressing worry. Citizens may produce unlawful underground media as a result of this form of dominance. This is the conflict between structure and agency in the media and political realms (Political influence on media). New political media are modes of communication that make it easier to create, distribute, and exchange political content on platforms and within networks that allow for cooperation and engagement. They've progressed at a breakneck pace over the last three decades, and they're still evolving in fresh, often unexpected ways. The impact of new media on democratic governance and political activities is far-reaching. New media can deliver information to individuals directly without the need for editorial or institutional barriers, which are inherent in legacy forms. As a result, the political conversation has become more unstable and unpredictable as a result of new media. In a democratic society, the media should play various important roles. Their main goal is to educate the public, equipping citizens with the knowledge they need to make informed judgments on

leadership and policy. Through their wide networking capabilities, new media can stimulate community formation that transcends geographic borders (OWEN, n.d.). According to the public choice theory, a government-controlled media outlet would distort and manipulate information in order to keep incumbent politicians in power, prevent voters and customers from making informed decisions, and eventually undermine democracy and markets. Although the media are not the only source of information for voters, in a world dominated by mass communications, the media are increasingly determining the political agenda, even in less advanced economies. In any society, the media plays a critical role in keeping citizens informed about current events and increasing awareness about various topics. It also has a huge influence on the public's perceptions and way of thinking. The media is the most important tool for shaping and manipulating public opinion. If the media plays this function in the normal course of events, it becomes even more important during extraordinary times, such as election seasons, when the media becomes a key participant.

In a democratic society like India, political parties are one of the most important political institutions. As a multi-party system, India has a large number of parties with various philosophies. Because newspapers and television play such a crucial role in shaping public opinion, the majority of media corporations are frequently associated with political parties in some way. This generation's youth are very politically engaged and the ideals that go along with it. There was no common venue for people to express their thoughts before, so leaders had to march in the streets to garner favour. Social media, on the other hand, has evolved into a place where people may freely express themselves. Politicians still utilise posters, cutouts, and other forms of media to promote their campaigns, but going digital and paying close attention to their digital platforms has transformed the landscape. Political organisations can use platforms like Twitter to communicate information on a global scale for debates or discussions. Making India the third largest Twitter user, with an estimated 53.1 million active users (as of the 2015 census). Campaigning and advertising on social media has a number of negative consequences. News on social media can sometimes be misinterpreted, leading to voter confusion. While there is a lot of campaigning going on on social media platforms, there is also a lot of fake news being distributed on these same channels, such as WhatsApp, Facebook, and others. This is frequently done in order to sway voters' voting decisions (bhatia, n.d.). The media is without a doubt the most significant tool for today's public participation. For policymakers, it is the most important tool in determining policy. Within the last few decades, the prominence of media has expanded in tandem with the advancement of technology and medium of expression. It is critical not only for public engagement, but also for the formation of public opinion. During a political campaign, groups devote a significant amount of time, effort, and money to gaining favourable media coverage for candidates running for important posts. When their contenders lose, they criticise the tone of the media coverage, despite the fact that vigorous, information-rich election campaigns are critical to the democratic process; experts have routinely scrutinised the behaviour of all parties involved, including the media. The media, without a question, is an important tool in the government's arsenal. The media is usually controlled in these types of states, and it is utilised to advertise the government's agenda and promote the government's philosophy. They don't criticise the government's actions or question their authority. Frequently, they are developing countries or countries that have lagged behind in technological growth. On a more positive note, these mass communication instruments should mobilise to aid the government in nation building. The revelations of the Jain Commission report were published in India Today's November 17 issue on November 9, 1997. The government was taken aback. This type of disclosure was said to be illegal under the rules of the Official Secrets Act, according to government sources. The government, on the other hand, was at a loss as to who to blame. This leakage should be held accountable. So, these are the kinds of issues that the government is dealing with. The importance of media coverage cannot be overstated, since it aids political parties in projecting themselves in a particular light before the public.

The system of governance that exists within the state determines the type of relationship that exists between the government and the state. The media is usually dominated in these types of states, and it



is utilised to advertise the government's agenda and propagate the government's philosophy. They don't criticise the government's actions or question their authority. Frequently, these are developing countries or countries where technological growth is lagging. In parliamentary democratic governments, particularly in India, the media plays a crucial role. A free and responsible press presents facts as well as standards of right and wrong, not only in the realm of politics, but in many other areas of human endeavour. The media keeps the public informed about what is going on in the legislature. The press is frequently referred to as the legislature's extension. The press is once again used to expose administrative flaws and shortcomings, as well as to air grievances and sufferings. The daily press provides the majority of the raw resources for parliamentary inquiries, motions, and debates. The press can only do this duty effectively if it has what is known as 'press freedom.' In India, the right to freedom of the press is implied in the fundamental right to "freedom of speech and expression" granted to citizens by the Constitution. The right to freedom of speech and expression includes the right to freedom of the press, according to the law. Any attempt by a government to impose restrictions on the media, whether through executive order or legislation, has been met with vehement opposition. Despite these liberties, the parliament has the unique right of keeping certain of its conversations private. Article 105, clause (3), as revised by the constitution (44th amendment) Act 1978, established the powers, privileges, and immunities of each house of parliament, as well as its members and committees.

### **Religion biasness by media houses**

There are numerous flaws in how religion is portrayed in the news outlets, many of which have been thoroughly documented. The potential conflict between religion and the media. The multi-dimensional research of religion revealed that religious and non-religious people are often divided by the 'source' rather than the 'content.' Journalists frequently use the help of "experts" to comment on stories because they believe that knowledge can be gained and maintained by education, training, and experience. Experts in this field are usually educated in universities or academies. Religious folks may be suspicious of secular sources and dismiss the research that supports the experts' views. Not only do the media and religion communicate their respective stories, but they also explain why certain events occurred. Professionals in the media regard themselves as competent analysts on what occurs and why. Journalists, columnists, and editorial commentators hurry to offer interpretations and, in a quasi-religious function, attempt to mould chaos into order, especially when events are shocking or upsetting. Traditionally, such concerns have been viewed as the domain of the religious leader, who speaks with a prophetic voice (Day, 2016).

### **Personal bias by media houses affecting journalism**

We consume a wide range of media as a society. To put this in context, the average worldwide consumer spends over 7.5 hours per day consuming media. We rely on it for news and cultural enjoyment, and we often take it for granted that what we're getting is accurate. Although it is very inconceivable for a person or a media outlet to be completely free of bias, certain outlets will go to extremes and produce extremely biased content. It's the proclivity to gravitate toward or away from someone or something. Factors such as your upbringing, culture, and personal experiences can all impact which way you lean. Bias can be something you're aware of, which is known as effort to undermine, but it can also be something you're not aware of, which is known as implicit or unconscious bias. Media bias is regarded to lean left or right in most countries, favouring liberal or conservative politics. In some countries, such as North Korea, media bias can go so far as to totally mirror the governing body's views. In situations like this, media bias effectively transforms into propaganda.

Although most of the media contains implicit bias, where journalists may face real barriers to neutrality such as a lack of access to all facts, the media also contains intentional bias on a regular basis. This is when media outlets purposefully strive to portray an event, group, or people in a certain

light in order to achieve a specific result. This outcome could be motivated by politics or simply a desire to generate more money (FUTURELEARN.COM, 2021).

Even before the pandemic, there was media bias in India, which was evident in the country's main newspapers, and which was shaped by political influences. For example, government money are vital to many newspapers' operations and budgets, and the current Bhartiya Janata Party (BJP) administration has refused to advertise with newspapers that oppose its policies. This pressure causes the media to advocate government programmes, resulting in skewed reporting that can influence political conduct in the incumbent's favour. Many news organisations have a symbiotic connection with the government, which benefits them by providing them with attention, financing, and visibility. These trends harm India's democracy while also endangering journalists who are critical of the government, jeopardising their right to physical protection (MOHAN, 2021).

### **Biasness due to the competition in the market**

A two-sided market's paradigmatic platforms are media outlets. On the one hand, they provide their audience with amusement and information. They do, however, allow advertisers to reach out to potential customers. Advertising is the sole source of revenue for many types of media sources, including commercial television, free online newspapers, blogs, radio, and free newspapers. The fact that practically all media sources rely on advertising to stay afloat has sparked concerns about advertisers distorting media content. Nevertheless, there is a key aspect that distinguishes the interaction between media and advertising from ordinary eyeball sales. The majority of the economic study on media bias has focused on bias in the informative substance of political news reporting. It has been demonstrated that there may be a liquidity political media bias resulting from journalists' personal tastes (BLASCO, 2011).

This view of the news as a source of pure knowledge differs significantly from that of non-economists who examine the media. Private media, according to these experts, aim to sell newspapers and television shows, as well as advertising space. They accomplish this by providing a lot of sheer enjoyment. Audiences want their news sources to not just inform, but also to explain, interpret, persuade, and entertain them. To accommodate this requirement, news organisations tell stories that are connected and have a point of view, a concept known as "the narrative imperative" in the industry (MULLAINATHAN, 2005).

Information diffusion has suffered as a result of privatisation and globalisation. There is currently a shift in the media's aims; there is a murine for increased reading and high TRP ratings. Large corporate entities currently control the media, which is motivated only by business motives, with media success and efficiency judged on a scale of commercial ratings rather than social contributions. The chase for top ratings has resulted in a significant decline in media quality (Charles, 2011).

### **Hindrance to privacy by media houses**

Furthermore, Article 20(3) of the Indian Constitution protects quiet. Because of the accused's right to silence, no one may be forced to testify against himself. The right to remain silent in court is specified explicitly in the article. In media trials, defendants are compelled to make remarks, and their silence is used to prove their guilt. The contents of a suspected person's confessional statements, as well as the contents of remarks made by witnesses examined by police, must be kept secret, and police personnel is not entitled to reveal the details of their probes to the public or the media. However, these declarations are progressively being recorded and broadcast nationally on television.

The Press Council of India (PCI) acknowledges a suspect's or accused person's right to be free from public scrutiny. "Unless there is a pressing public interest in doing so, the press must not interfere with or infringe an individual's privacy. Reporting on concerns that may denigrate women requires extra caution." Nevertheless, the press has decreed itself to be "Janta Adalat," implying that the innate standards of justice of "presumption of innocence until proven guilty" and "guilt beyond a

reasonable doubt" are being threatened by judging people based on their records, including photographs, as in the case of Bollywood's drug case, where they affluent the mind by showing pictures of accused women in bikinis or pubs, among other things. Through emotions and persuasion, too much media participation robs people of their right to a free and fair trial. "The fairness of the trial is of essential significance," it was stated in the **Bofors pay-off case**, "since without such protection, there would be trial by media, which no civilized society can and should accept." The Court's Responsibilities Any other authority in a civilized society cannot assume it (Privacy, n.d.).

The courts have said in **R.Rajagopal** (R RAJAGOPAL v STATE OF TAMIL NADU, 1994) and case of **Public union for civil liberties** (PUCL v UOI, 1996) that the right to privacy is an integral component of the right to life.

In Case of **Gobind** (Govind v. State of Mp, 1975), it was held that a journal, magazine, or book's printer and publisher are liable for damages if they publish any matter concerning an individual's private life, such as his family, marriage, procreation, parenthood, child bearing, education, and so on, without his consent. This right is not available when the publication has become public record or where the publication relates to the fulfilment of official duties of a public servant, unless the publication is proven to be false, malicious, or untruthful.

In a country like India, where freedom of expression is as vigorous and multi-faceted as it is, the media plays a critical role in balancing the public's interests with the exercise of government power. Just as the media is granted freedom of speech and expression in order to disseminate knowledge and cater to the public's right to know, it is also critical to protect people's privacy, which is a goal pursued by the law of privacy. "When there is a confrontation between an individual's right to privacy and the right to information of citizens," the supreme court said, "the former right must be surrendered to the latter because it serves a wider public purpose" (Charles, 2011).

## Conclusion

According to the study that came before this one, the impact of the media trial is more detrimental than it is beneficial (except for a few exceptions). Although it is impossible to deny the importance of the media because it keeps the public informed, knowledgeable, and vigilant, and on occasion, it also acts as a regulatory body of government functions and mistreatment by attempting to make them publicly available through various mediums such as television, radio, newspaper, and so on; however, media houses, acting as "public courts," are beginning to tamper with court proceedings, completely ignoring the crucial gap between an "accurate" and an "opinionated" account of what happened in the court.

One of the main reasons why the media should be accountable for what they write and broadcast is because they have such a large effect on the people. The media has a moral obligation to provide the public with neutral information from which they can draw conclusions or develop views. Although print media is controlled and rarely deviates from such standards, it is electronic media that is to blame for the whole mess. Because electronic media is unregulated, it has been using a trial-and-error approach to see what works. To deceive its audience, the media should avoid broadcasting and publishing vulgar and sensationalized news showing only one side of the situation. In many instances, such as the Jessica Lal murder case, the media, which played a crucial role in presenting the offender in court through several sting operations, may be regarded to have spurred the investigation. The media also had a crucial role in the administration of justice in the case of Priyadarshini Mattoo, however, these are rare instances in which media influence has been positive. The media nearly forced the Nirbhaya Rape defendants to face the death penalty as a result of their assertions. As a result, meddling has frequently resulted in more harm than benefit. The media will have a positive impact on them as long as it acts as a catalyst and does not go overboard by declaring one of the parties guilty before the trial begins. The difference between assisting the court in dispensing justice and interfering with and overstepping bounds in the delivery of justice should be

understood by the media. The media must report the facts and circumstances of the case, but the judiciary is entirely responsible for judgment.

### Suggestions

For democracy to survive, a free press is a necessity. The digital violence is a breach of peace in and of itself. In a liberal and positive sense, the media is a regulated anarchy. The court, on the other hand, must follow the rules of adjudication as well as the law's mandate. My suggestions for regulating media trial would be:

- i. The 'tele-terror' should not be permitted to interfere with a legally binding trial.
- ii. Despite the fact that there are several legal measures for regulating various platforms in social media, such as troll sites, many people avoid facing the penalties owing to a lack of awareness of the provisions. Because of weak rules and more financial resources being circulated for digital campaigning, political parties, candidates, and party workers are committing more offences on social media platforms. As a result, public awareness must be raised, and strict legislation must be written and implemented to ensure citizens' protection.
- iii. Necessitating the intervention of the competent authorities to establish precise guidelines that ensure universal and uniform ethical standards in the media business. A thorough and regularly applied code of ethical norms would provide greater clarity on crucial concepts such as "ensuring privacy, neutrality, and impartiality," eliminating any subjectivity in its application.
- iv. The media must be held accountable for inaccurate stories regarding certain religious organisations.

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