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THE TRIAL BEFORE THE TRIAL

~ ***Pal Meena***

A person accused of an offence may face two trials: one before a court and another before the public. The first is governed by evidence and procedures. The second may take place through TV debates, newspaper headlines and social media discussions, often before the court has reached any conclusion. This is commonly described as a "media trial".

Reporting the matters of public interest is an indispensable part of a free society, but it must respect the presumption of innocence. When reporting crosses into deciding, an allegation can be presented as fact, risking prejudicing the legal process and undermining fairness.

NOT THE FREEDOM WITHOUT RESPONSIBILITY

> "I am a great lover of the press, a great lover of freedom of speech and expression, but please realise your limits."
>
> ~ Ram Jethmalani

The statement captures the tension at the heart of the debate. Defending press freedom does not necessarily mean defending every act carried out in its name. The question is where responsible reporting ends and prejudgment begins.

The Constitution does not use the expression "freedom of the press" separately. However, the Supreme Court has consistently recognised freedom of the press as part of the freedom of speech and expression guaranteed under Article 19(1)(a). This freedom is important not only for journalists but also for the public, which depends upon the press for information on

matters of public concern. At the same time, Article 19(1)(a) is subject to the reasonable restrictions contained in Article 19(2).

The Supreme Court has recognised the need to balance freedom of the press with the administration of justice. In *Reliance Petrochemicals* v. *Proprietors of Indian Express Newspapers*, the Court considered the possibility of publications interfering with judicial proceedings. It was observed that preventive restraint on publication requires a real and imminent danger to the judicial process.

The Courts have also recognised the distinction between reporting and prejudging a case. In *Sahara India* v. *SEBI*, the SC held that, in appropriate circumstances, courts may issue postponement orders to prevent a substantial risk to the fairness of a trial, while emphasizing the importance of balancing such orders against freedom of expression.

These decisions do not mean that courts should routinely stop the media from reporting cases. They point to a narrower concern: there is a difference between reporting what has happened in a case and effectively deciding what the outcome should be.

The difference matters because the damage caused by a media trial may begin long before a court can provide a remedy. A person who is repeatedly presented as guilty may face damage to employment opportunities, professional relationships and social reputation. Even if the person is eventually acquitted, the acquittal may not receive the same attention as the original allegation. A judicial finding may restore legal status, but it cannot automatically erase years of public suspicion.

ARE EXISTING REMEDIES ENOUGH?

Indian law already provides mechanisms for addressing irresponsible media conduct, such as the Press Council of India’s inquiries and sanctions. Strengthening these existing remedies can enhance accountability without excessive state intervention.

Broadcast media operates under another framework. The Cable Television Networks (Regulation) Act, 1995 contains a Programme Code, while the Cable Television Networks (Amendment) Rules, 2021 introduced a three-level complaint redressal structure: first at the

broadcaster level, then through a self-regulatory body and finally through government oversight.

Therefore, the problem is not simply the lack of regulation but whether existing rules provide sufficient incentives for media organisations to exercise greater care and maintain public trust.

A correction published several days after an accusation does not necessarily have the same reach as the original headline. The same is true of a legal remedy that may take years. By that time, the initial version of the story may have become the version that people remember.

Part of the difficulty also lies in the gap between the speed of public discourse and the pace of criminal justice. When investigations and trials take time, audiences may demand immediate explanations and conclusions. The media then begins filling that gap, not merely by informing the public about what is known, but by constructing its own version of the story before the legal process is complete.

ACCOUNTABILITY WITHOUT CENSORSHIP

Self-regulation has an important role here. The Press Council itself describes self-regulation as a way of maintaining a balance between press freedom and responsibility. Its norms require journalists to avoid inaccurate, baseless, misleading or distorted material and caution against presenting rumours and assumptions as facts.

For media trials in particular, self-regulatory standards should require news organisations to clearly distinguish between an allegation, evidence placed before a court and a judicial finding. Headlines and visual presentations should not create an impression of guilt where the legal position is still undecided. Verification should precede amplification: the fact that a claim is capable of attracting public attention cannot itself make it fit for publication as established fact.

However, self-regulation will have limited value if violations have no meaningful consequences. Serious or repeated violations could therefore attract proportionate sanctions through an effective self-regulatory mechanism, including public censure, mandatory

corrections and, where legally authorised, monetary penalties. Its purpose would be deterrence: a media organisation should have a reason to verify facts and distinguish allegations from findings before publishing them.

The existing system already recognises corrective measures. The Press Council's framework includes mechanisms through which findings and inquiry particulars can be brought to public attention. What is needed is not a system where every controversial report becomes a government matter, but one where serious and identifiable failures in journalistic conduct have consequences.

At the same time, accountability cannot become a way of punishing criticism. A media organisation should not face sanctions merely because its reporting is uncomfortable, unpopular or critical of a powerful institution. The focus should be on conduct that can be assessed against clear standards, for example, deliberately publishing false information, materially misleading the audience or presenting an unproven allegation as though it were a judicial finding. Any serious sanction should also follow a fair procedure.

THE PRESS SHOULD REPORT THE TRIAL, NOT BECOME IT

A free press is essential to democracy. It can expose wrongdoing, question institutions and bring information to the public domain. That role should remain protected.

But the freedom to report does not mean that every allegation can be presented as fact without responsibility. The public has a right to know what is happening in a case. The person facing the allegation also has a right to be treated as innocent until guilt is established according to law.

The challenge is to protect both interests without replacing press freedom with censorship. Stronger professional standards, effective self-regulation, timely corrections and proportionate consequences can help create that balance.

A court decides guilt or innocence. The media has an important role in telling the public what is happening before, during and after a trial. It should report the trial, not become the trial.