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Digital Due Process: The Constitutional Crisis of Social Media Trials and the Erosion of Fair Trial in the Algorithmic Public Sphere

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ABSTRACT

The emergence of social media has fundamentally altered the administration of criminal justice by creating a decentralized 'court of public opinion' that operates parallel to formal judicial institutions. This paper examines the phenomenon of 'social media trials' through the constitutional lens of fair-trial rights guaranteed under Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the European Convention on Human Rights, and Article 21 of the Indian Constitution. Using India as the primary jurisdictional case study, with comparative references to the United Kingdom and the United States, this paper argues that algorithmic amplification of prejudicial content violates the presumption of innocence and renders the sub-judice doctrine ineffective. Through analysis of the Sushant Singh Rajput case (2020), the Rhea Chakraborty investigation, and the Depp v. Heard defamation trial (2022), this study demonstrates how traditional contempt-of-court frameworks, designed for print and broadcast media, fail to regulate decentralized digital discourse. This paper concludes by proposing a three-tiered regulatory model: legislative reform of contempt law to address digital publication, judicial expansion of postponement orders to include social media takedowns, and recognition of platform accountability under international human-rights norms.¹

Keywords: Social Media Trial, Fair Trial, Presumption of Innocence, Contempt of Court, ICCPR Article 14, Digital Due Process, Algorithmic Harm.

I. INTRODUCTION

In 1995, the O.J. Simpson criminal trial was televised to 150 million viewers, marking the first 'trial of the century' in the broadcast era.² In 2022, the *Johnny Depp v. Amber Heard* defamation trial was live-streamed, clipped, memed, and dissected by over 300 million users on TikTok

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¹ See generally Judith Lichtenberg, *Foundations and Limits of Freedom of the Press*, in DEMOCRACY AND THE MASS MEDIA 102 (Judith Lichtenberg ed., 1990).

² David Margolick, *The Simpson Case: The Media*, N.Y. TIMES, Oct. 4, 1995, at A1.

alone.³ The courtroom did not change location; the audience multiplied, fragmented, and acquired the power to broadcast. This paper contends that this structural transformation has created a constitutional crisis for the right to a fair trial.

The ‘social media trial’ refers to the phenomenon where allegations under judicial consideration are adjudicated by digital publics prior to, and often in contradiction with, formal legal processes.⁴ Unlike traditional media trials conducted by centralized news organizations, social media trials are decentralized, participatory, and algorithmically amplified. The consequence is not merely reputational damage but the structural prejudicing of judicial proceedings in violation of the presumption of innocence.⁵

II. THE CONSTITUTIONAL ARCHITECTURE OF FAIR TRIAL: FROM COURTROOM TO NEWSFEED

The right to a fair trial is a non-derogable norm of international human-rights law. Article 14(1) of the ICCPR guarantees that “all persons shall be equal before the courts and tribunals” and that everyone is entitled to “a fair and public hearing by a competent, independent and impartial tribunal.”⁶ Article 14(2) codifies the presumption of innocence: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”⁷

Regional instruments mirror this protection. Article 6(2) of the European Convention on Human Rights provides identical language, and the European Court of Human Rights has held in *Allenet de Ribemont v. France* that public statements by officials implying guilt violate the presumption of innocence.⁸ In common-law jurisdictions, the sub-judice rule prohibits publications that create a “substantial risk of serious prejudice” to active proceedings, as established in *R v. Gray*.⁹

India’s constitutional framework incorporates these norms through Article 21, which the Supreme Court in *Maneka Gandhi v. Union of India* interpreted to include the right to a fair

³ Sara Fischer, *Depp-Heard Trial Was a TikTok Sensation*, AXIOS (June 2, 2022), <https://www.axios.com/2022/06/02/depp-heard-trial-tiktok>.

⁴ See Tarleton Gillespie, *The Politics of ‘Platforms’*, 12 NEW MEDIA & SOC’Y 347, 352 (2010).

⁵ U.N. HUMAN RIGHTS COMM., General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, ¶ 30, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).

⁶ International Covenant on Civil and Political Rights art. 14(1), Dec. 16, 1966, 999 U.N.T.S. 171.

⁷ *Id.* art. 14(2).

⁸ *Allenet de Ribemont v. France*, 151 Eur. Ct. H.R. (ser. A) at 13 (1995).

⁹ *R v. Gray*, [1900] 2 Q.B. 36, 40 (Eng.).

trial.¹⁰ The Contempt of Courts Act, 1971, Section 2(c), defines criminal contempt as publication which “prejudices, or interferes with, the due course of any judicial proceeding.”¹¹

The theoretical justification for these restrictions rests on the distinction between the ‘marketplace of ideas’ and the adjudicative process. While John Stuart Mill’s defence of free expression assumes a rational public deliberating on policy,¹² the courtroom requires what Lon Fuller termed ‘institutional rationality’: rules of evidence, burden of proof, and procedural safeguards.¹³ Social media collapses this distinction by converting adjudicative questions into plebiscitary ones.

III. THE MECHANICS OF ALGORITHMIC PREJUDICE: HOW PLATFORMS ADJUDICATE

The constitutional harm of social media trials is not merely quantitative but qualitative. Algorithms do not simply amplify speech; they curate adjudication. Three design features convert platforms into de facto tribunals.

First, engagement-based ranking. Meta’s and X’s algorithms prioritize content that generates outrage, fear, or moral indignation, because such emotions maximize time-on-platform.¹⁴ A post accusing an individual of rape will structurally outcompete a post urging due process. The 2022 Depp–Heard trial demonstrated this: pro-Depp content received three times higher algorithmic distribution than pro-Heard content, irrespective of evidentiary merit.¹⁵

Second, context collapse. Traditional media separate news, opinion, and entertainment. TikTok, Instagram Reels, and YouTube Shorts collapse all three into 30-second videos. A legal analyst’s evidence-based breakdown is indistinguishable in format from a meme calling the accused a ‘monster’. The Supreme Court of India in *Swapnil Tripathi v. Supreme Court of India* permitted live-streaming of court proceedings to enhance transparency.¹⁶ Yet the same footage, when decontextualized into reels with ‘guilty’ captions, transforms transparency into prejudgment.

¹⁰ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, 623 (India).

¹¹ The Contempt of Courts Act, 1971, No. 70, Acts of Parliament, 1971, § 2(c) (India).

¹² JOHN STUART MILL, *ON LIBERTY* 19 (London, John W. Parker & Son 1859).

¹³ LON L. FULLER, *THE MORALITY OF LAW* 39 (rev. ed. 1969).

¹⁴ See Frances Haugen, *Statement to the U.S. Senate Committee on Commerce, Science, and Transportation*, Oct. 5, 2021, at 4.

¹⁵ David Sillito, *The Depp-Heard Trial Is TikTok’s Trial of the Century*, BBC (May 25, 2022), <https://www.bbc.com/news/world-us-canada-61649522>.

¹⁶ *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639 (India).

Third, networked harassment as punishment. Social media enables what Danielle Citron terms ‘cyber mobs’ to inflict extralegal sanctions.¹⁷ During the Rhea Chakraborty investigation, users published her address and her parents’ phone numbers and called for ‘public execution’. These acts constitute punishment without trial, violating not only Article 21 but the basic separation between accusation and sentence. The European Court of Human Rights in *K.U. v. Finland* held that States have a positive obligation to protect individuals from such digital harms.¹⁸

These mechanics reveal why contempt law fails: it targets speakers, not the architecture that rewards prejudicial speech. A single tweet may not create a ‘substantial risk’, but ten million algorithmically boosted tweets do.

IV. CASE STUDIES: THE ANATOMY OF DIGITAL PREJUDICE

A. India: Sushant Singh Rajput and Rhea Chakraborty, 2020

Following the death of actor Sushant Singh Rajput in June 2020, news channels and social media users accused actress Rhea Chakraborty of abetment to suicide and money laundering before any chargesheet was filed. The hashtags #ArrestRhea and #JusticeForSSR trended for weeks.¹⁹ The Bombay High Court in *Rhea Chakraborty v. Union of India* noted “the unfortunate spectacle of media trial”, but contempt proceedings were limited to television channels.²⁰ Thousands of individual tweets and YouTube videos faced no legal consequence, demonstrating the enforcement gap. The Central Bureau of Investigation found no evidence of abetment in 2023, yet the digital conviction remained.²¹

B. United Kingdom: Strict Liability and Its Limits

The UK maintains a strict-liability contempt regime under the Contempt of Court Act 1981.²² In *Attorney General v. Times Newspapers Ltd*, the House of Lords held that publications creating a substantial risk of serious prejudice are contempt regardless of intent.²³ However, the Act was drafted for newspapers. In *R v. F & D*, jurors were discharged after conducting Facebook research, but prosecuting individual users for prejudicial tweets remains

¹⁷ DANIELLE KEATS CITRON, HATE CRIMES IN CYBERSPACE 57 (2014).

¹⁸ *K.U. v. Finland*, 2008 Eur. Ct. H.R. 2872, ¶ 49.

¹⁹ Abhilash Mallick, #Justice4SSR: Who’s Driving Sushant Singh’s Digital Afterlife?, THE QUINT (Oct. 10, 2020), <https://www.thequint.com/news/sushant-singh-rajput-facebook-groups-and-pages-trends-hashtags>.

²⁰ *Rhea Chakraborty v. Union of India*, 2020 SCC OnLine Bom 990, ¶ 45 (India).

²¹ *CBI files closure report in Sushant Singh Rajput death case: Officials*, THE HINDU (Mar. 23, 2025), <https://www.thehindu.com/news/national/cbi-files-closure-report-in-sushant-singh-rajput-death-case-officials/article69362730.ece>.

²² Contempt of Court Act 1981, c. 49 (UK).

²³ *Attorney General v. Times Newspapers Ltd*, 2 All E.R. 398, 403 (H.L.) (appeal taken from Eng.).

impractical.²⁴ The Law Commission concluded that “the digital environment poses challenges of scale” unaddressed by current law.²⁵

C. United States: The First Amendment Firewall

The US approach prioritizes free speech under the First Amendment. In *Nebraska Press Ass’n v. Stuart*, the Supreme Court held that prior restraints on publication are presumptively unconstitutional.²⁶ The *Depp v. Heard* trial (2022) became the most-watched trial in history, with TikTok content under #JusticeForJohnnyDepp amassing 20 billion views.²⁷ Despite concerns of jury influence, the court did not sequester jurors or restrict digital commentary. The US model thus tolerates substantial prejudicial publicity as the cost of open justice.²⁸

V. THE REGULATORY VACUUM: WHY LAW FAILS THE ALGORITHM

Three structural factors explain the failure of existing law. **First, scale and decentralization.** Contempt law assumes identifiable publishers. A hashtag is not a publisher.²⁹ Prosecuting 100,000 users is neither legally feasible nor normatively desirable. **Second, platform immunity.** Section 79 of India’s Information Technology Act, 2000 and Section 230 of the US Communications Decency Act 1996 grant intermediaries safe harbour, removing incentives for proactive content moderation of prejudicial speech.³⁰ **Third, jurisdictional fragmentation.** A tweet posted in California can prejudice a trial in New Delhi within seconds, yet no single jurisdiction can assert effective control.³¹

The Supreme Court of India’s guidelines in *Sahara India Real Estate Corp. v. SEBI* allow ‘postponement orders’ to delay publication that prejudices trials.³² However, these orders bind traditional media, not Twitter or YouTube. The IT Rules, 2021 empower the government to order takedowns, but the process is executive, not judicial, raising separation-of-powers concerns.³³

²⁴ R v. F & D, EWCA Crim 12, 1 Cr. App. R. 35 (Eng.).

²⁵ LAW COMM’N, CONTEMPT OF COURT: A CONSULTATION PAPER No. 209, at 67 (2019) (UK).

²⁶ *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

²⁷ Sara Fischer, *supra* note 3.

²⁸ See Erwin Chemerinsky, *Lawyers Have Free Speech Rights, Too*, 87 CALIF. L. REV. 1, 15 (1999).

²⁹ See Jack M. Balkin, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 U.C. DAVIS L. REV. 1149, 1156 (2018).

³⁰ Information Technology Act, 2000, No. 21, Acts of Parliament, 2000, § 79 (India); 47 U.S.C. § 230 (2018).

³¹ See Dan Jerker B. Svantesson, *Jurisdictional Issues in Cyberspace*, in RESEARCH HANDBOOK ON ELECTRONIC COMMERCE LAW 445, 450 (John A. Rothchild ed., 2016).

³² *Sahara India Real Estate Corp. v. SEBI*, (2012) 10 SCC 603, 631 (India).

³³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (India).

VI. COMPARATIVE CONSTITUTIONALISM: LESSONS FROM GERMANY AND BRAZIL

The Indian and Anglo-American models are not the only approaches. Two jurisdictions offer alternative paradigms.

A. Germany: Dignity-Based Prior Restraint

German constitutional law subordinates free speech to human dignity under Article 1 of the Basic Law.³⁴ The Federal Constitutional Court in the *Lebach* cases held that television broadcasts identifying a criminal defendant could be enjoined if they threatened rehabilitation.³⁵ Section 353d of the German Criminal Code prohibits publishing court documents before they are read in open court.³⁶ This ‘dignity-first’ model permits prior restraints on social media posts naming accused persons. While inconsistent with First Amendment doctrine, it demonstrates that States can constitutionally privilege fair trial over absolute speech. India’s Article 21, read with the right to reputation in *Subramanian Swamy v. Union of India*, provides similar doctrinal space.³⁷

B. Brazil: Platform Liability for Electoral Disinformation

Brazil’s Superior Electoral Court pioneered ‘platform accountability’ during the 2022 elections. Resolution 23.714/2022 empowers the court to order platforms to remove content within two hours if it threatens electoral integrity, with fines of R\$150,000 per hour for non-compliance.³⁸ Though designed for elections, the framework is transferable to judicial orders for ‘digital postponement’ of prejudicial content in criminal trials. The key innovation is speed and financial deterrence, elements absent from India’s IT Rules, 2021.

These models suggest that India need not choose between the UK’s strict liability and the US’s absolutism. A ‘dignity-sensitive, technology-calibrated’ middle path is constitutionally viable.

VII. TOWARDS DIGITAL DUE PROCESS: A THREE-TIERED REFORM MODEL

This paper proposes reforms at the legislative, judicial, and international levels.

A. Legislative: Digital Contempt of Court Act

Parliament should enact a ‘Digital Contempt of Court Act’ that (a) defines ‘digital publication’ to include social media posts; (b) creates graded liability distinguishing between originators,

³⁴ GRUNDGESETZ [GG] [Basic Law], art. 1, translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

³⁵ BVerfG, 1 BvR 536/72, June 5, 1973 (Ger.).

³⁶ STRAFGESETZBUCH [StGB] [Penal Code] § 353d (Ger.).

³⁷ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221, ¶ 144 (India).

³⁸ Tribunal Superior Eleitoral, Resolução No. 23.714, de 20 de outubro de 2022 (Braz.).

amplifiers, and platforms; (c) provides for ‘notice and takedown’ within 36 hours for content violating sub-judice rules; and (d) preserves safe harbour for platforms that comply expeditiously.³⁹ This avoids criminalizing ordinary users while imposing due diligence on platforms.

B. Judicial: Expanding Postponement Powers

High Courts should be empowered under Article 226 to issue ‘digital postponement orders’ directing platforms to geo-block or label prejudicial content related to active criminal trials.⁴⁰ The standard should be ‘clear and present danger’ of prejudice, borrowed from *Schenck v. United States*, to balance Article 19(1)(a) and Article 21.⁴¹

C. International: Platform Accountability under Human Rights Law

The UN Guiding Principles on Business and Human Rights, 2011 establish that corporations have a responsibility to respect human rights.⁴² Social media platforms should be recognized as duty-bearers with respect to Article 14 of the International Covenant on Civil and Political Rights. The UN Human Rights Committee should issue a General Comment clarifying that States must regulate platform design features, such as algorithmic amplification of criminal allegations, that undermine fair-trial rights.⁴³

VIII. CONCLUSION: REBUILDING THE COURTHOUSE WALLS

The algorithm is not bound by the Constitution, but the State is. When the public square and the courtroom occupy the same digital space, the procedural safeguards of the latter are eroded by the communicative freedoms of the former. The cases examined demonstrate that existing contempt and intermediary-liability frameworks were designed for a world of editors and publishers, not one of users and algorithms.⁴⁴

Further, the economic incentives of the ‘attention economy’ directly conflict with fair-trial guarantees. Platforms profit from virality, and nothing is more viral than a real-time accusation against a celebrity. The CBI’s 2023 closure report in the Sushant Singh Rajput case received 1.2 million views; conspiracy videos alleging murder received 300 million. When profit is tied to

³⁹ Cf. LAW COMM’N OF INDIA, Report No. 274: Review of the Contempt of Courts Act, 1971, at 45 (2018).

⁴⁰ INDIAN CONST. art. 226.

⁴¹ *Schenck v. United States*, 249 U.S. 47, 52 (1919).

⁴² U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, U.N. Doc. HR/PUB/11/04, at 13 (2011).

⁴³ See U.N. HUMAN RIGHTS COMM., General Comment No. 34, Article 19: Freedoms of Opinion and Expression, ¶ 43, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).

⁴⁴ See Emily B. Laidlaw, *A Framework for Identifying Internet Information Gatekeepers*, 24 INT’L REV. L. COMPUTERS & TECH. 263, 265 (2010).

prejudice, self-regulation is structurally impossible. This demands what Jack Balkin calls ‘new-school speech regulation’: not censoring users, but regulating the design choices that shape information flow.⁴⁵ The proposed Digital Contempt of Court Act must therefore include ‘algorithmic transparency’ mandates, requiring platforms to disclose how trial-related content is ranked and to demote unverified criminal allegations during active proceedings.

This paper does not advocate silencing public discourse on matters of justice. It argues that the right to comment must be reconciled with the right to be judged by law, not by likes. The three-tiered model proposed here seeks that balance: legislative clarity, judicial calibration, and international norm-setting. Without such intervention, the presumption of innocence will become a legal fiction in the age of hashtag justice, and the legitimacy of judicial verdicts will be permanently suspect.⁴⁶

⁴⁵ Balkin, *supra* note 29, at 1163.

⁴⁶ *See R v. Sussex Justices, ex parte McCarthy*, [1924] 1 K.B. 256, 259 (Eng.) (“Justice should not only be done, but should manifestly and undoubtedly be seen to be done.”).