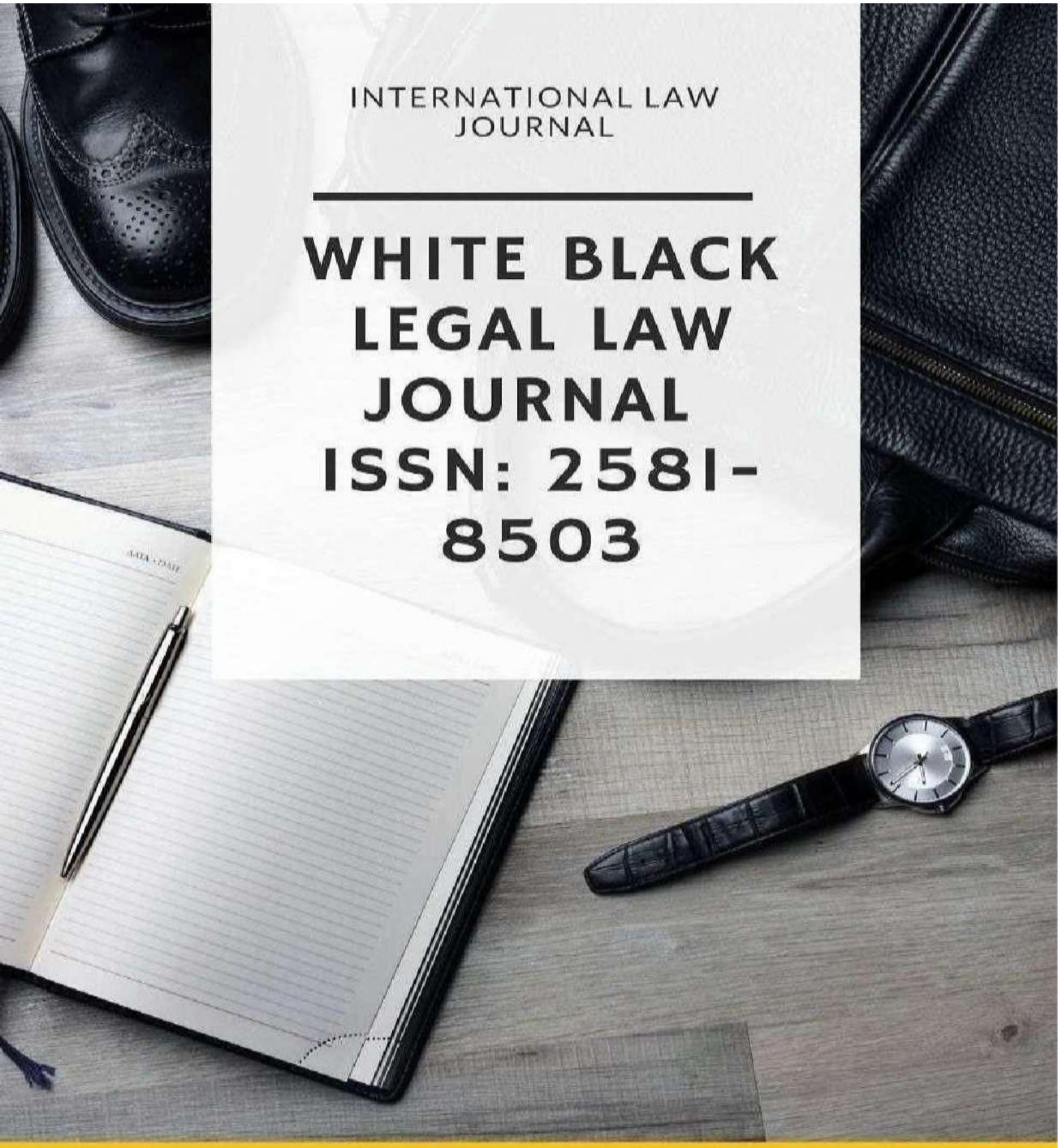

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FROM NEWSROOM TO COURTROOM: TRIAL BY MEDIA

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Abstract

The growth of 24-hour news, online journalism and social media has changed the nature of media and criminal justice system in India. Reporting on crime has since evolved out of the factual coverage of courts to incessant, even speculative coverage of investigations and trials, creating what has come to be known as media trial. Although an active press has been instrumental in the publicizing of investigative malfunctions, corruption, and institutional injustice, overreliance in judicial affairs can be highly questionable to the constitution. The paper will discuss the conflict between Article 19(1)(a) of the Constitution of India and Article 21 of the Constitution of India in relation to the freedom of speech and expression and the right to a fair trial respectively. The study takes a doctrinal and comparative approach to the analysis of provisions in the constitutions, the Contempt of Courts Act, 1971, laws of defamation and privacy, sector-based media regulations, and landmark court rulings of the Supreme Court and High Courts. It also uses comparative lessons of the United Kingdom, the United States and Nigeria to consider various patterns of controlling the prejudicial publicity. The paper suggests that media trial amounts to a kind of parallel adjudication that when it surpasses all discernible limits of timing, tone and content intervenes with the process of administering justice and erodes the guarantee of fair trial. It ends by recommending a balanced regulatory system that seeks to balance the freedom of press and judicial integrity by restricted contempt standards, temporary injunction of time, enhanced self-regulation and informing the public about the presumption of innocence.

Key Words: Media Trial, Fair Trial, Freedom of Speech and Expression, Contempt of Court, Criminal Justice System

Introduction

In current times in India, the relationship between media and criminal justice has shifted from irregular reportage to continuous and real-time narration of investigation and trial. Television channels, digital news portals and social-media feeds now routinely frame criminal cases as dramatic stories, often projecting suspects in strongly positive or negative terms long before any judicial judgment of guilt has arrived.[1] While vigilant journalism has unquestionably exposed police inaction, prosecutorial lapses and systemic bias in matters such as corruption, gender-based violence and custodial deaths, the phenomenon commonly labelled "media trial" raises serious concerns about prejudgment, reputational harm and pressure on courts to conform to popular sentiment.[2]

The term "media-trial" is generally used to describe situations where the press and broadcast media do not merely report on proceedings but effectively conduct a parallel adjudication. This may require speculative re-creation of the events, airing of untested as evidence, staged debates in the studio, encouraging the viewer to say the word guilty, and using repetitive imagery or labelling that portrays the accused as a criminal. Such practices go well beyond the classical open justice role in which the media serve as the eyes and ears of the public, providing accurate and contemporaneous accounts of what transpires in court. When the boundary between watchdog journalism and parallel prosecution is blurred, there is a risk that the constitutional guarantee of a fair trial becomes hollow in practice.

Simultaneously, the constitutional system of India gives centrality to the freedom of expression. Article 19(1) (a) has been understood to cover freedom of press and protection of very large scope of journalistic practices including critical comment of courts and discussion of an impending proceedings as such as limited by the specific restrictions identified in Article 19(2). The Supreme Court has repeatedly underlined that a free and independent media is indispensable to democracy, both as a site of public deliberation and as a mechanism for holding the other branches of state to account. Any attempt to curb media excess therefore risks sliding into censorship and chilling legitimate scrutiny of the criminal process.

The main doctrinal clash in the discussion of media trials can therefore be considered as having

[1] Trial by Media: Looking Beyond The Pale of Legality, Civil Services Times Magazine,(Jul.12.2001), available at http://www.civilservicestimes.com.
[2] H.M Seervai., Constitutional Law of India 723 (Universal Law Publishing Co Vole 1, 4th Ed; 1991)

been between the constitutional dedication to free speech and the implication of a right to a fair trial under Article 21[3] that is perceived to comprise presumption of innocence, impartial hearing and just, fair and reasonable procedures. The Law Commission of India's 200th Report[4] explicitly recognised that extensive, prejudicial coverage of suspects after arrest but before trial may distort public perception and undermine the administration of justice, and recommended certain amendments to the law of contempt to address this risk. More recent judicial pronouncements and academic analyses similarly suggest that media-driven narratives can affect witnesses, investigative decisions and even sentencing, thereby creating what some commentators describe as a "fourth forum" beyond legislature, executive and judiciary.

The present paper analyzes legal and policy issues that are presented by media trials mainly in the Indian context, although with selective reference to comparative experience in the United Kingdom, the United States and Nigeria. It takes an approach which is more doctrinal, which is an examination of constitutional provisions, statutory provisions such as the Contempt of Courts Act, 1971 and sectoral rules which regulate media print and broadcast journalism, as well as the landmark decisions made by High Courts and Supreme Courts which have grappled with the tension between effective media coverage and the right to fair trial. Rather than surveying literature in a separate section, the discussion integrates relevant scholarly and institutional perspectives directly into the analysis of doctrine and caselaw.

The core claim advanced is that "media trial" should be conceptualised as a form of parallel adjudication which, once it crosses certain thresholds of timing, tone and content, amounts to undue interference with the administration of justice and a violation of fairtrial guarantees. Thus concurrently, any legal reaction has to be specifically focused, adjusted to the facts of digital and social media, and sensitive to the risks of excessive antecedent control of the people speaking about a court case. The paper therefore argues for a composite regulatory model that combines carefully defined contempt standards, timebound postponement orders, strengthened self-regulatory mechanisms within media bodies, and public-facing education on presumption of innocence, rather than relying exclusively on punitive sanctions after the fact.

[3] Justice R.S. Chauhan, Trial by Media: An International Perspective, (PL Oct S-38, 2011), http://www.supremecourtcases.com/index2.php., last visited on June 28,2016.
[4] 200th Report of the Law Commission on “Trial by Media: Free Speech v Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)”

The argument proceeds in five stages. To start with, the paper defines the notions of what is considered to be media trial and fair trial to draw the line between the fair trial and fair reporting of the media, and the bias parallel adjudication. Second, it identifies the constitutional/ statutory framework in India, as regards the interrelationship between Articles 19 and 21, the Contempt of Courts Act, 1971 and other applicable defamation and privacy legislation. Third, it examines judicial reactions on major Supreme Court and High Court cases to uncover the principles by which courts are guided when faced with prejudicial publicity. Fourth, it derives specific lessons based on the comparative comparisons in the United Kingdom, the United States and Nigeria with the focal point on reporting striction regimes and internal trial protections. Finally, it advances concrete reforms designed to reconcile media freedom with the integrity of criminal adjudication in the Indian constitutional scheme.

Media Trial and Fair Trial

The expression "media trial" has no formal statutory definition in India, but it has acquired a fairly consistent meaning in legal and academic discourse. It refers to situations where media institution, through their intensive and often sensational coverage, effectively assume the roles of investigator, prosecutor and judge by shaping narratives of guilt or innocence while a case is still under investigation or sub judice. The focus shifts from reporting verifiable facts to constructing a storyline in which the accused is cast in a predetermined role, frequently reinforced through emotive visuals, loaded language and repetitive studio debates.[5]

Conceptually, media trial must be distinguished from robust but legitimate court reporting. Regular open justice reporting entails true, good-faith reporting of what is said and done in court, occasionally with critical commentary not yet showing how issues yet to be determined are to be decided. In comparison, media trial usually happens outside or before the official process: when the press releases excerpts of statements leaked, holds a so-called exclusive interview with witnesses, recreates scene of crime with actors, or publishes edited tapes suggesting the witnessing of the process or the admission to guilt. In such scenarios, the public space becomes a parallel forum where guilt is debated and often decided long before evidence is tested in accordance with legal rules.

Indian and comparative writing identify certain recurring characteristics of media trials. These

[5] BLACK'S LAW DICTIONARY (11th ed. 2019).

mainly focus on a few high-profile cases reliance on anonymous sources or unverified leaks, emotive framing that appeals to outrage or sympathy and an implicit invitation to viewers to render their own verdict. In practice, this can lead to labelling the accused as "murderer", "rapist" or "terrorist" in headlines and talk shows well before any judicial finding, thereby eroding the distinction between suspicion and conviction.

Although the Constitution does not explicitly use the phrase "fair trial", Indian courts have consistently held that the concept is embedded in Article 21, read with Articles 14, 19 and 22. Judicial interpretation, supported by international statues such as the ICCPR, has fleshed out a set of core elements that together constitute the right to a fair criminal trial.

First, presumption of innocence is regarded as the "golden thread" of criminal jurisprudence. Every person accused of an offence is to be treated as innocent until the court has proven guilt beyond reasonable doubt, and this presumption must inform both procedure and public discourse. The Supreme Court has repeatedly affirmed that presumption of innocence is a human right grounded in Article 21 and reflected in Article 14(2) of the ICCPR. Any practice that reverses this presumption in the eyes of the public without a lawful adjudication undermines the fairness of the trial.

Second, a fair trial requires an independent, impartial and competent judge or adjudicatory body The freedom to decide is a sign of independence, the absence of external influences, such as political forces, economic benefits and advertising campaigns; the absence of any bias necessitates that the judge should approach the situation with an open mind, without having a mind to reach to a particular decision. without being determined to arrive at a certain resolution. The Supreme Court has linked judicial impartiality to Article 21[6] and has warned that judges must not allow themselves to be "influenced by the roar of the crowd" when deciding criminal cases.

Thirdly, the trial should proceed under due process that consists of timely proceedings, the equality of arms, the right to know the charges, sufficient time and facilities of defence, the right to cross-examine the prosecution witnesses, and the right to call counsel, including state

[6] NDIA CONST. art. 21

funded counsel when the need arises. Cases such as Hussainara Khatoon[7] have identified speedy trial as a constituent of Article 21 and subsequent cases have incorporated victim and witness protection into the structure of fair procedure.

Fourth, the open justice is usually regarded as a part of fair trial due to its transparency and accountability that is ensured by publicity. Courts in India and abroad have stressed that justice must not only be done but be seen to be done, which ordinarily implies public hearings and the possibility of media attendance and reporting. However, open justice is not absolute: proceedings may be restricted or held in camera in exceptional circumstances, such as protection of minors, sexual-offence victims, national security or where publicity would defeat the ends of justice.

Finally, the fair-trial guarantee has a dignitary dimension, safeguarding the accused, victims and witnesses against unnecessary humiliation, invasion of privacy and extraneous punishment. The Supreme Court has linked reputation and privacy to Article 21, emphasising that even those accused of grave offences retain basic rights until lawfully convicted.

How media trials threaten fair-trial guarantees

When media coverage remains factual, proportionate and confined to what transpires in court, it tends to reinforce rather than undermine fair trial by making proceedings transparent and reinforcing accountability. The problem arises when coverage crosses qualitative thresholds and becomes a de facto trial in its own right. At the level of presumption of innocence, media trials often reverse the burden by presenting allegations as facts and repeating impeaching material in ways that make subsequent acquittals appear suspect. Labels such as “killer” or “mastermind” or graphics that visually associate the accused with crime-scene imagery, invite viewers to assume guilt long before the prosecution has discharged its evidentiary burden. In high-profile matters, such pre-judgment can generate intense social ostracism of the accused and their families, amounting to a form of informal punishment outside the legal process.

Media trials can also restrict the judicial independence and impartiality, not necessarily by overtly influencing judges, but by creating an environment in which decisions contrary to dominant media narratives attract fierce criticism and suspicion. In such a environment,

[7] Hussainara Khatoon (I) v. State of Bihar, (1980) 1 S.C.C. 81 (India).

acquittals may be portrayed as "failures" of the system or as evidence of corruption, which can subconsciously incentivise harsher reasoning or sentencing to align with majoritarian expectations. The Supreme Court has repeatedly cautioned that judges must resist these pressures, but the very need for such warnings corroborates that media-generated atmospherics are a real concern.

Further, media trials may compromise procedural fairness by affecting witnesses and potential juror-equivalents in the broader public. Witnesses who see their statements dissected on television or face aggressive media attention may become reluctant, hostile or excessively partisan. In systems that use juries where lay public opinion is otherwise influential, heavily publicised narratives can contaminate the pool from which fact-finders are drawn. Even in India's judge-centric model, the saturation of one-sided information can shape how police investigate, how prosecutors frame charges and how defence strategies are received socially, thereby indirectly affecting trial dynamics.

Media trials also implicate the dignitary aspects of fair trial by exposing accused persons and victims to intrusive scrutiny and character assassination. It is prone to digress into personal life or publish pictures and names against statutory prohibitions, especially in sexual crimes where anonymity laws are often disobeyed. These acts are not only devastating in psychological and reputational terms but also can result in discouraging criminals to report and non-cooperative witnesses to assist lawful organizations.

Lastly, it is the structural dimension. The power of the courts as the only place to establish the criminal responsibility would be compromised when the community starts using media verdicts as more trustworthy than judicial ones. Such loss of trust has longer term effects of the rule of law, since it will promote litigants and officers acting to the gallery, instead of legal norms.

The conceptual prism used in this paper then sees media trial not as a case of any critical reporting about a pending case, but as a distinct mode of communication which: (a) assumes guilt, (b) acts in parallel, rather than supportive of, the judicial process, and (c) poses real threats to some or all aspects of a fair trial under Article 21. By putting the issue into perspective like this, one is able to avoid the confusion between legitimate press freedom and prejudicial publicity, and set the stage to carry out a doctrinal analysis about when and how the law can intervene lawfully to safeguard the integrity of criminal adjudication.

Indian constitutional and Statutory Framework.

This clash of media trials and the rights of fair trials in India is rooted in the interplay between two categories of constitutional guarantees, which are freedom of speech and expression in Article 19(1)(a) [8]and the right to life and personal liberty, which also comprises the right to fair trial, in Article 21.

In Article 19(1)(a) it is stated that every citizen is entitled to the right to freedom of speech and expression. Even though, the Constitution does not directly state about freedom of the press, the Supreme Court has always stated that the freedom of the press is an inseparable part of Article 19(1)(a) and the media is one of the main channels through which this freedom is exercised. Meanwhile, Article 19(2) allows the State to place reasonable limitations on this freedom in the interests of among others the sovereignty and integrity of India, the security of the State, order, decency or morality, contempt of court, defamation and incitement to an offence. The direct mention of the contempt of court and defamation gives the main constitutional grounds to stop prejudicial media coverage of impending proceedings.

Article 21 states that no one should be denied life or personal liberty without due process laid down by law. The Supreme Court has broadened Article 21[9] to encompass the necessity of making such a procedure just, fair and reasonable reading a variety of due process guarantees into it, as in Maneka Gandhi and later cases. The Court has also appreciated that Article 21 also implies a fair trial which includes presumption of innocence, independent and unbiased trial, access to legal counsel and protection against arbitrary or unfair interference.

The dilemma posed by media trials therefore arises when the Article 19(1) (a) freedoms of aggressive reporting of crimes and commentary seem to be infringing the Article 21 right of the accused to be heard and tried on the basis of evidence leveled against it in a court of law. Since the two freedoms are constitutionally guarantee the two roles of the courts are not to favour one over the other but to co-ordinate and ensure that the restrictions are strictly limited and substantially based.

[8] INDIA CONST. art. 19, § 1, cl. (a).
[9] NDIA CONST. art. 21.

Article 19(2): contempt of court and defamation as control points

Among the Article 19(2)[10] grounds, two are especially relevant to media trials: "contempt of court" and "defamation".

The contempt ground allows Parliament to enact laws penalising acts or publications that scandalise or lower the authority of courts, prejudice or interfere with judicial proceedings, or obstruct the administration of justice. This is the foundation for the Contempt of Courts Act, 1971, which codifies (with modifications) the common-law contempt jurisdiction. In media trials, this issue is mostly the criminal contempt by publication that interferes or is likely to interfere or that obstructs or is likely to obstruct the administration of justice.

Defamation, on the other hand, is used to stop the individual reputation against statements that are not true thus diminish an individual in the eyes of others. Articles and broadcasts which declare an accused a criminal prior to conviction may in principle incur civil or criminal liability in defamation under the Indian Penal Code (and its successors) and notwithstanding any implication of contempt. Nevertheless, actions against defamation are personal solutions and not systemic issues regarding the fairness of the current trials.The Supreme Court has emphasised that any restriction on speech under Article 19(2) must be "reasonable" both in substantive content and procedural safeguards. In media-trial situations, this means that limitations justified by contempt of court or defamation must be proportionate to the risk posed to fair-trial rights and not extend to mere criticism or inconvenient reportage.

Article 21 and judicial expansion of fair trial

The Supreme Court's jurisprudence has substantially elaborated the content of fair trial under Article 21. In *Hussainara Khatoon*[11], the Court read the right to speedy trial into Article 21 and linked prolonged pre-trial detention to denial of liberty. Later decisions have affirmed that fair trial includes adequate legal representation, opportunity to present a defence, and protection against coerced confessions and unfair evidentiary practices.

The Court has also connected fair-trial rights with presumption of innocence and judicial independence. In cases dealing with sensational prosecutions, it has warned that the atmosphere surrounding a trial must be free from external pressures, including prejudicial publicity, if

[10] INDIA CONST. art. 19, § 2.
[11] Hussainara Khatoon (I) v. State of Bihar, (1980) 1 S.C.C. 81 (India).

Article 21 is to be meaningfully realised. At the same time, the Court has repeatedly upheld open-court principles and recognised that media access to proceedings promotes transparency and public confidence. The constitutional challenge lies in determining when publicity crosses the line from legitimate reporting to unlawful interference.

The Contempt of Courts Act, 1971

The Contempt of Courts Act, 1971 is the main legislative tool that can be used to combat biased media reporting. Section 2(c) describes the meaning of criminal contempt to refer to publication (by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the commission of any other act which:

scandalous, or likely to scandalise, or undermine or likely to undermine the authority of any court; or

- prejudices, or is or is likely to be interfering, or likely to interfere, with, the due course of any judicial proceeding; or
- interferes or is likely to interfere with or hampers or is likely to hinder the administration of justice in any other way.

The issues that are under the second and the third limbs are usually media trial. Publishing reports where an accused person is depicted as guilty when the case is still on may be regarded as presenting an actual and material threat of prejudice to the due process of the law. Safeguards are, however, also incorporated in the Act: Section 3 gives a defence of innocence publication in situations where the publisher in question had no reasonable cause to believe that the proceeding was underway; Section 4 offers fair and accurate reporting of judicial proceedings a defence; and Section 5 offers fair comment on the merits of any case that is heard and finally decided.

According to the 200th Report of the Law Commission, the current interpretation of the literal meaning of criminal proceedings implies that they are not considered as pending until either a charge sheet is filed or a cognizance is taken by the court, thus there is a gap between arrest and taking over of proceedings. It noted that media bias during this initial period is usually most acute and suggested that the definition of pending be extended to allow the jurisdiction of contempt to cover the publication that has already endangered the fair conduct of trial since the time of arrest. It further suggested that High Courts be given the power to pass postponement orders to temporarily put off publication of some material in exceptional cases

where immediate publicity would be a serious risk to the administration of justice.

Although these recommendations are still in the process of being put into effect, several decisions of the Supreme Court like the one in Sahara India Real Estate v SEBI have acknowledged postponement orders as a constitutionally acceptable measure of balancing the rights to free speech and fair trial, by being designed in a narrow, time bound manner.

Legal remedies on defamation, disclosure of identity and privacy.

Other than contempt law, there are other general criminal provisions that limit some types of media trial. In the Indian Penal Code (and its analogues in the new criminal code), the parts of the defamation offence criminalise publication of imputations that damage the reputation of a person, with defences of truth and the good of the people. When the media outlets brand an accused as a criminal without sufficient grounded facts they may risk being subjected to defamation lawsuits, but practically such a move is cumbersome and ineffective as a deterrent. More directly connected with the fair trial is the provision of privacy and anonymity in certain areas. An example that can be provided is section 228A IPC which states that the identity of victims of certain sexual offences shall not be disclosed as it is a legislative statement that such a disclosure demeans the dignity of the individual victims, as well as the readiness of victims to collaborate with the justice system. Any such identities disclosed by media whether during high profile trials and otherwise are illegal regardless of whether they will impact favorable trial of the accused and could lead to prosecution.

More guidance on how to prevent prejudicial and sensational reporting on sub judice cases is found in sectoral laws and rules, including the Cable Television Networks (Regulation) Act and programme codes and Press Council norms. These devices generally encourage broadcasters and publishers to avoid acting on presumption of guilt, re-enacting or disclosing material of confession prior to adjudication but with minimal punishments.

Combined, the constitutional and statutory system provides Indian courts with a set of tools in dealing with a media trial: Articles 19 and 21 establish normative parameters; the Contempt of Courts Act establishes a coercive jurisdiction over prejudicial publications; the defamation and privacy provisions secure individual dignity; and sectoral codes are a source of ethical standards in responsible reporting.

Nonetheless, the architecture is not smooth. The delay between the arrest and official pendency, the spread of language in the social media and the laxity of the ethics imply that numerous cases of media trial enter into grey areas where the damage to fair trial exists but which the law is unclear or under applied. It is in this flawed system that the judiciary has been forced to devise case by case solutions which the following section discusses using prominent rulings on the right of media coverage and fair trial.

Judicial Responses and Landmark Cases

Affirming media freedom and open justice

In early free-speech decisions, the Supreme Court located press freedom at the heart of Article 19(1)(a), even before the language of "media trials" emerged. In *Romesh Thapar v State of Madras*[12] and *Brij Bhushan v State of Delhi*[13], the Court invalidated pre-censorship orders, holding that prior restraint on political journalism could not be justified except on the limited grounds in Article 19(2). Later, in *Indian Express Newspapers v Union of India* [14]and *Bennett Coleman v Union of India*[15], restrictions on newsprint and cross-media ownership were scrutinised on the basis that the press must remain sufficiently independent to perform its watchdog role. These decisions establish that any attempt to regulate media coverage of criminal cases must be justified narrowly and cannot be a cloak for suppressing criticism of the justice system.

The Court has also repeatedly extolled open justice. In cases dealing with in-camera proceedings and reporting bans, it has treated public access and media reporting as the rule, with secrecy as the exception justified only to the extent necessary to protect competing rights such as privacy, national security or decency. This jurisprudence forms the backdrop against which later media-trial cases are decided.

Recognising the dangers of trial by media

As 24-hour television and tabloid-style reporting expanded, courts began to confront explicit complaints of "trial by media". In *State of Maharashtra v Rajendra Jawanmal Gandhi*[16], a capital case that attracted heavy publicity, the Supreme Court cautioned that "a trial by press, electronic media or public agitation is the very antithesis of the rule of law" and warned judges

[12] Romesh Thapar v. State of Madras, AIR 1950 SC 124
[13] Brij Bhushan v. State of Delhi, AIR 1950 SC 129
[14] *Indian Express Newspapers v Union of India*
[15] Bennett Coleman & Co. v. Union of India, (1973) 2 SCC 788
[16] State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386

not to be swayed by media campaigns. Although the conviction was sustained on evidence, the Court used strong language to emphasise that guilt must be decided exclusively in court and not in studio debates.

In *M.P. Lohia v State of West Benga*[17]*l*, relating to a dowry-death prosecution, the Court deprecated the publication of articles commenting on the merits of the case while it was pending, holding that such material could prejudice the accused's right to a fair trial and might amount to contempt. Similarly, in *Ajay Goswami v Union of India*[18], while primarily dealing with obscenity and standards for print media, the Court noted the limits of existing self-regulation and hinted at the need for more responsible gatekeeping when reporting on sensitive matters.

High Courts have also stepped in. In *Court on its Own Motion v State* (Delhi High Court) [19]and subsequent suo-motu proceedings, judges expressed concern over channels conducting parallel investigations, broadcasting "sting" operations and pressuring witnesses, and reminded media houses that they are bound by contempt and programme-code rules.

High-profile cases and media narratives

A number of widely publicised cases offer concrete illustrations of how courts respond to media pressure. The Jessica Lal and Priyadarshini Mattoo trials are often cited as examples where sustained media coverage and public protests pushed authorities to correct investigative and prosecutorial failures, eventually leading to convictions on appeal. Judicial pronouncements in these matters acknowledge the role of public opinion but avoid conceding that decisions were driven by media campaigns, emphasising instead the evidentiary record.

Aarushi Talwar murders case and Sushant Singh Rajput death investigation showed the darker side. Both received heavy, speculative and usually accusing media attention, such as aired re-creations and hints at the nature of the deceased and suspects. Despite varying end results, time and time again courts warned of the press trying to replace the investigating agencies or the courts and condemned leaks and sensation that may corrupt evidence or intimidate witnesses.

In terrorism connected and communal sensitive issues, the Supreme Court has emphasized that pre-trial labelling of the suspects as terrorists or masterminds in the public discourse is fraught with profound prejudice. This type of comment is claimed to be inconsistent with the presumption of innocence even in those cases where conviction is eventually affirmed and may

[17] M.P. Lohia v. State of West Bengal, (2005) 2 SCC 686

[18]

[19] Court on Its Own Motion v. State, 2009 SCC OnLine Del 384

make the task of an unbiased trial difficult.

Delay orders and balanced structuring.

The foremost case on the issue of the rights of media and fair trial is that of Sahara India Real Estate Corp. Ltd. v SEBI[20], and it was in this case that the Supreme Court thought about whether a court can temporarily withhold the publication of a particular proceeding in order to bar prejudice. Relying on comparative law, in particular, the substantial risk of serious prejudice test in the UK, the Court decided that, under exceptional circumstances and when three conditions are all satisfied: there is a real and substantial risk of prejudice to the administration of justice; the order is necessary to prevent that risk; and the order is proportionate in scope and duration. The Court emphasized that such orders would be better than either blanket gagging of the media or ex post facto punishment in the form of contempt. Thereafter courts of law have relied on Sahara when they had to face high profile criminal cases and have sometimes given orders to the media to exercise discretion when releasing confession like content or prejudicial images pending trial. Courts however have not gone as far as to issue detailed and avoidable guidelines, rather case specific exhortations.

Contempt with prejudicial publicity.

The reported cases of courts having bona fide actually convicted media houses based on media trial are few, nevertheless, some proceedings are informative. Through the case of Rajendra Sail v Madhya Pradesh High Court Bar Association[21], the Supreme Court maintained the conviction of an individual who spread distorted versions of a judgment of the court that deliberate misrepresentation which erodes the confidence of people in the judiciary system is contempt. Although this case is not a media trial case per se, it is an indication that there are limitations to defamatory or misleading media coverage when it comes to judicial rulings.

Courts have in other cases given show cause notices to channels and anchors on commentary that seemed to utter guilt prior to trial, but has shut proceedings following apologies or pledges to follow guidelines. This trend indicates the judicial hesitation to exercise contempt authority against the press too often, which makes the existence of more clear statutory guidelines and self-regulation a much better way to control media trials.

[20] Sahara India Real Estate Corp. Ltd. v. SEBI, (2012) 10 SCC 603
[21] Rajendra Sail v. Madhya Pradesh High Court Bar Ass'n, (2005) 6 SCC 109

Comparative Views.

United Kingdom: liability and reporting limitations, which are stricter.

The legal measures taken by the UK to combat prejudicial publicity, include the Contempt of Court Act 1981[22] the introduction of strict liability rule of publication creating a substantial risk of serious prejudice or impediment to on-going proceedings, whether intentionally or not. Procedures are made active at particular stages (arrest or charge), and it is the responsibility of media organisations to be cautious thereafter. Another statutory power that explicitly permits courts to delay the publication of reports of proceedings when they are needed to prevent significant risk of prejudice may be found in Section 4(2) of the act, and is similar to postponement orders in the context of Sahara.

Professional and judicial advice will give more specific checklists of what can be reported (e.g. basic facts and bails determinations) and what should not be carried out (e.g. prior convictions, any purported confessions or conjectural commentary). Though the UK courts apply the robust approach to protect the freedom of press in other situations, the fair trial is regarded as a powerful countervailing factor, and the judicial system is eager to impose fines or prosecute media outlets in case of contempt.

United States: First Amendment supremacy and in-house protection.

The protection that is enjoyed by the media speech in the United States under the First Amendment is exceptionally strong, and prior restraint is looked upon with profound suspicion. In cases such as Nebraska Press Association v Stuart[23], the Supreme Court has overturned wide scale gag orders of the press, concluding that it should only issue such orders under the most exceptional conditions where there is a clear and present danger which cannot be reduced by any other means.

The US system focuses on protecting trial rights within the country, such as intensive voir dire to screen jurors who might be biased, change of venue to less polluted jurisdictions, jury sequestration, and strong jury instruction not to pay attention to publicity. Although this model assumes that the jury system is functional and substantial logistical resources are available, it demonstrates an example of a system in which fair trial is upheld but does not require a lot of speech regulation.

[22] Contempt of Courts Act, No. 70 of 1971
[23] Nebraska Press Ass'n v. Stuart, 427 U.S. 539

Nigeria and other common law jurisdictions.

The latest Nigerian literature and legal precedent reflect Indian anxieties regarding media trials. The Nigerian Constitution secures the right to expression freedom and to fair hearing, and the courts have cautioned that the presumption of innocence and independence of courts could be ruined by the sensational reporting of alleged corruption and terrorism. Constitutional Amendments specifically suggested in scholarly literature include banning prejudical publicity, and statutory penalties to prevent the use of trial by media, without having to end investigative journalism.

Other jurisdictions of the common law African countries, as well as regional human rights institutions, also acknowledge that uncontrolled publicity may jeopardize a fair trial using such tools as the African Charter on Human and Peoples' Rights. But the detailed statutory regimes that are similar to the UK are less widespread, and their enforcement ability is frequently restricted.

Lessons for India

Such comparative models imply a number of lessons. The UK shows that explicit statutory tests which the risk is substantial of serious prejudice together with fixed conceptualizations of active proceedings and postponement orders could offer fairly predictable directions to the media and the courts. The US experience demonstrates the worth of internal management of trials and judicial fortitude in the wake of publicity but its First Amendment environment and jury-centric system is quite different compared to that in India.

Nigeria and other countries with weak institutions and where political interests are high make clear that in such societies, media trials will easily become pressure on the court and that it is all too normatively appealing that some specific legal restrictions.

In the case of India, what it means is that a compromise model is probably in order, keeping up with high protection of criticism and investigative reporting, yet with more explicit statutory guidelines and redress mechanisms on the solution of prejudicial publicity in cases of impending criminal proceedings.

Reform Suggestions.

To begin with, under the current constitutional and statutory framework, both the strength of media freedom and the primacy of fair trial are already known, however, it does not provide precise means of addressing the new media trials, particularly during the initial post arrest

period and on social media.

Second, judicial rulings are marked by a significant rhetorical denunciation of trial by media and comparatively few actual penalties, which is an understandable desire not to invoke contempt of court too often in relation to journalists.

Third, self-regulatory codes by agencies like the Press Council and the broadcast associations include reasonable precepts but do not assume guilt, identity protection, not sensationalistic but no instruments are in place to enforce the codes, especially in the case of electronic and online media on the basis of TRP and click inducements.

Fourth, as experience shows, restrictions on prejudicial reporting that are highly focused, particularly in the shape of postponement orders and clear tests on the basis of risk of prejudice seriousness, can be based even on a robust culture of media freedom.

Reform proposals

Statutory meaning and threshold test of prejudicial publicity.

To establish the meaning of the phrase "prejudicial publication" in the context of ongoing criminal proceedings, parliament might revise the Contempt of Courts Act, 1971 (or could create a special fair trial and media law), relying on the formula of the UK of substantial risk of serious prejudice. The law ought to further indicate that a simple statement of factual developments or non-defamatory comment cannot be contempt, but information that purports guilt, or discloses inadmissible confessional type information or identities covered by the protection would be restrained or punished where it poses a significant danger of prejudice.

Restructuring of the concept of pendency to include the post arrest phase.

The contempt uses of pendency should start as suggested by the Law Commission, at the time of arrest or naming as a suspect rather than at the time of charging or filing of the charge sheet. It would take the most unstable part of media trial directly following arrest in an even stronger legal context, without sacrificing the factual coverage of arrest and charges.

Organized, time limited delay orders. Structured, time-bound postponement orders

Codification of the Saharan doctrine of postponement order should have elaborate protection.

The courts must be authorised to withhold publication of identified types of material (e.g. prior conviction, purported confession, witness information of a sensitive nature, etc.) in situations where the court determines: (a) real and substantial risk of serious prejudice; (b) no less restrictive alternative; and (c) proportionality in scope and duration. Orders should be rationalized, appealable immediately, and periodically reviewed to avoid excessive censorship.
Enforcing and reconciling media ethics codes.

The Press Council, broadcast regulators and digital news bodies should collectively improve the existing state of ethical norms on reporting sub judice issues, and specifically recommend on:

- guilt-suggestive headlines and labels;
- re-enactments and crime scene dramas.
- use of stolen investigative evidence;
- deliberation of the social media content as sources.

To go beyond voluntary compliance, accreditation, access to official briefings and membership in industry bodies can be pegged on showcased compliance with these norms.

Witness protection and enforcement of privacy as well as anonymity.

The current restrictions of the disclosure of the identity of the victims and other sensitive information should be stricter, and special units are to be vigilant of the adherence to the rules and take timely measures against the breachers of the rules. Meanwhile, the statutory witness protection programmes ought to be tightened to protect the witness against media harassment even by the use of controlled access systems in high profile cases.

Police and prosecution communication guidelines.

Much of the prejudice material comes either by leaked documents or off the record briefings by the officials. Clear service directions and criminal proceedings mandates ought to bar disclosure of inadmissible content, speculative conclusions, or remark on culpability by police or the prosecutor in the investigation and trial, and should impose disciplinary actions against breach.

Juristic education and regular practice.

Such judicial schools need to include courses on media and fair trial, training judges to identify prejudice, write specific postponement orders, and communicate with media in a manner that does not undermine transparency without endangering justice. Regular usage of standards will

minimise uncertainty, and it will be easier to plan coverage among the media organisations.

Popular legal education programs.

Lastly, informed citizenry is necessary in the long term change. Campaigns on the understanding of presumption of innocence, media trials limits and critical consumption of crime news should be taken up by the bar councils, law schools and the civil society groups and even on social media. With time, the more discriminating audience will put pressure on the market towards responsible reporting.

Normative position

These reforms do not aim at the silencing of the press but rather make the media not to usurp the courts as the main arbiter of criminal responsibility. When carefully calibrated, they maintain the critical role of investigation journalism and open justice and protect against parallel adjudication, which undermines the rights of accused individuals and the power of the judiciary.

Conclusion

The media trials phenomenon in India is straddling the two fundamental constitutional promises: a free, critical and plural media, and a criminal process based on fairness, impartiality and respect of human dignity. With technology increasing the range and rate of communication, the once clear line between the courtrooms and the rest of the population has become porous and speculation and indignation are more likely to take the place of evidence based adjudication.

The discussion in this paper confirms that the Indian law is already loaded with a substantial number of conceptual tools required to act in response to this challenge. The need to protect fair trial and expression is stated in Articles 19 and 21, Contempt of Courts Act, provisions on defamation and privacy as well as sectoral media code, albeit in varying registers. One of the long-standing warnings against trial by media has been judicial decision, which have started to explore postponement orders and custom directions. However, time lapses, implementation and transparency give way to biased publicity, especially at the early post arrest stage and in cyberspace.

Practical experience indicates that India does not have to decide on whether to have a muted press or a weakened judiciary. Skillfully written constitutional norms, organized yet remarkable powers of delay, effective ethics reinforcement and enhanced internal trial protection all can help mitigate the threat of the parallel adjudication process, without smothering the purposeful criticism or investigating journalism.

Finally, the media freedom and the fair trial are both pillars of the constitutional democracy. It is unacceptable to have a system where courts make their decisions in the dark as much as it is unacceptable to have a system where guilt is passed on TV or on the social media even before the court has heard any evidence. The law and policy should work to make sure that the enlightening role of the media makes the criminal justice administration stronger and not perverted.