

The Role of Digital Evidence in Media Trials Challenges and Opportunities Under the Bharatiya Nagarik Suraksha Sanhita (Bnss) 2023

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Abstract—The rapid digitalization of society has significantly impacted the criminal justice systems of the world. The emergence of digital communication tools such as the Internet and the widespread use of technologies like the smartphone and the Internet in India have led to the widespread use of electronic and digital evidence in the investigation and determination of criminal cases. The emergence of television news media and social networking sites has also led to the phenomenon of "media trials," where criminal cases are extensively discussed and analysed in the public domain before the determination of the cases by the courts of law.

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), along with the Bharatiya Sakshya Adhinyam, 2023, is a major reform of the criminal justice system in India. The Bharatiya Nagarik Suraksha Sanhita, 2023, incorporates a number of technological innovations in the criminal justice system of India. The Bharatiya Nagarik Suraksha Sanhita, 2023, incorporates electronic First Information Reports, digital summons, audio-video recording of investigative procedures, and electronic evidence management systems in the criminal justice system of India. The emergence of such technological innovations in the criminal justice system of India has led to a number of apprehensions with regard to the misuse of such evidence by the media.

The trials involving leaked digital materials such as CCTV footage, mobile phone records, social media communications, and forensic reports have been increasingly impacting public opinion in criminal cases. This may compromise the right to a presumption of innocence. Moreover, technologies such as deepfake videos, artificial intelligence-generated materials, and

cyber manipulation may affect the reliability of such evidence.

The present research paper aims to critically analyse the role of digital evidence in media trials in light of the legal provisions set forth by the legal regime established by the BNSS, 2023. This paper examines legal provisions, constitutional provisions, and landmark judicial pronouncements on electronic evidence and media trials. This paper also examines the comparative approaches taken in legal regimes such as the United Kingdom and the United States. This paper concludes by offering some suggestions on reforms to be implemented to ensure that technology helps promote transparency, accountability, and the right to a fair trial.

Index Terms—Digital Evidence, Media Trials, BNSS 2023, Bharatiya Sakshya Adhinyam, Electronic Records, Fair Trial, Digital Forensics

I. INTRODUCTION

Advancement in Technology has impacted the way in which modern legal systems operate. The rise and increased usage of smartphones, social media, cloud computing, and digital communication networks have changed the way individuals interact and conduct their daily lives. As such, the rise in criminal activities is also attributed to the advancements in technology.¹

¹ See Bharatiya Sakshya Adhinyam, No. 47 of 2023, Sec. 61–63; Information Technology Act, No. 21 of 2000, Sec. 2(1)(t).

In contemporary criminal investigations, digital evidence has become vital in constructing factual narratives, tracing suspects, and determining criminal culpability. Electronic evidence, including emails, text messages, call detail records, CCTV footage, and location records, is frequently used by law enforcement agencies to establish factual narratives in crime investigations.²

The rising trend of using digital evidence is a result of the larger digitalization trend in society. In India, with a rapidly growing number of internet users and widespread smartphone usage, a huge volume of electronic evidence is being generated every day, which is likely to be relevant to crime investigations, thereby making digital evidence an integral part of contemporary judicial systems.

At the same time, the rise of mass media and social media platforms has dramatically altered the public's engagement with criminal justice proceedings.³ News channels, online portals, and social networking platforms regularly report on ongoing criminal cases, sometimes presenting investigative findings and digital evidence to millions of viewers.⁴

This phenomenon, which is commonly termed as media trials, occurs when the media takes an active role in scrutinizing criminal cases even before a verdict has been reached by the courts. Excessive media reporting on a given criminal case may result in a parallel forum of adjudication in the public domain.

The intersection of digital evidence and media trials has given birth to a complex legal scenario. Digital evidence such as chat logs, CCTV footage, and forensic reports are often leaked to the media during an ongoing investigation. This leaked evidence may be disseminated widely through various media platforms such as television or social media.⁵

² Anvar P.V. v. P.K. Basheer, (2014) 10 S.C.C. 473; Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 S.C.C. 1

³ Sahara India Real Estate Corp. Ltd. v. Sec. & Exch. Bd. of India, (2012) 10 S.C.C. 603

⁴ Law Commission of India, *Report No. 200: Trial by Media* (2006)

⁵ R.K. Anand v. Registrar, Delhi High Court, (2009) 8 S.C.C. 106; Manu Sharma v. State (NCT of Delhi), (2010) 6 S.C.C. 1

Realizing the necessity to modernize the criminal justice system in India, the Parliament introduced three new criminal laws in 2023. These laws are the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam. These laws replace colonial laws and are an effort to incorporate digital technology in the criminal process.

The BNSS includes various provisions that help in the efficient management of electronic communication and audio-video recording of investigative procedures. These are efforts to improve efficiency and transparency in the criminal process.

However, the increased visibility of digital evidence in media reporting gives rise to concerns regarding privacy and misinformation. This research paper focuses on the role of digital evidence in media trials under the BNSS.

II. CONCEPT AND EVOLUTION OF MEDIA TRIALS IN INDIA

The term "media trial" can be defined as "the simultaneous discussion and analysis of criminal proceedings, often with opinionated commentary from the media, including television channels, newspapers, and online news outlets, which may affect public opinion regarding the guilt or innocence of the accused before the final judgment is delivered." Thus, the concept of media trial is based on the idea that the media, including television channels, newspapers, and online news outlets, takes on the role of the investigator, prosecutor, and even the judge, as they present their opinion and point of view, prejudging the outcome of the case. While the role of the media is significant in creating public opinion and promoting transparency, it may interfere with the concepts of fair trial and presumption of innocence, which are integral to criminal jurisprudence in India.

In India, the idea of media trials gained prominence with the expansion of private television channels and 24-hour news broadcasting in the late 1990s and early 2000s. Prior to this period, traditional print media covered court proceedings mainly in a factual and restrained manner. However, the liberalization of the media sector and the increasing competition among news outlets for higher viewership and ratings led to more sensationalized reporting. News channels

began hosting debates, conducting independent investigations, and presenting speculative conclusions about ongoing cases. As a result, certain high-profile criminal cases received massive media coverage, often shaping public opinion even before the judiciary could complete the trial process.

One of the early cases that brought the issue of media trials into the spotlight was the Jessica Lal Murder Case, where intense media coverage and public pressure played a significant role in reopening the investigation after the initial acquittal of the accused. The widespread campaign by news channels and newspapers generated public outrage, eventually leading to the conviction of the accused by the High Court. Similarly, the Priyadarshini Mattoo Case witnessed extensive media attention that highlighted alleged investigative lapses and contributed to renewed judicial scrutiny.

Another widely discussed example is the Aarushi Talwar Murder Case, where continuous media speculation and contradictory reports significantly influenced public discourse. In this case, the media not only reported developments but also presented various theories about the crime, often without verified evidence. Such reporting raised serious concerns regarding the potential impact of media narratives on the fairness of judicial proceedings and the reputation of individuals involved in the case.

The judiciary in India has repeatedly acknowledged both the importance and the risks associated with media trials. The Supreme Court has emphasized that while freedom of speech and expression under Article 19(1)(a) of the Constitution protects the right of the media to report on judicial proceedings, this freedom is subject to reasonable restrictions, including the need to ensure a fair trial under Article 21, which guarantees the right to life and personal liberty. In the landmark judgment of *Sahara India Real Estate Corp. Ltd. v. Securities and Exchange Board of India*, the Supreme Court recognized the concept of “postponement orders,” allowing courts to temporarily restrict publication of certain information if it could prejudice an ongoing trial.

Over time, the debate surrounding media trials has intensified due to the rise of social media platforms, online journalism, and citizen reporting. Digital platforms enable instant dissemination of information, often without adequate verification, which can further amplify prejudicial narratives.

Consequently, the challenge for the Indian legal system lies in maintaining a balance between protecting the freedom of the press and safeguarding the integrity of the judicial process.

III. CONSTITUTIONAL FRAMEWORK OF MEDIA TRIALS IN INDIA

The concept of media trial refers to the practice where the media—particularly television channels, newspapers, and digital platforms—conduct parallel discussions and analyses of ongoing criminal or civil cases, often presenting opinions that may influence public perception regarding the guilt or innocence of an accused person before the court delivers its judgment.⁶ In essence, media trials involve the media assuming the role of investigator, prosecutor, and sometimes even judge by presenting narratives that may prejudice the outcome of a case.⁷ While the media plays a crucial role in informing the public and promoting transparency in the justice system, excessive or sensational reporting can interfere with the principles of fair trial and presumption of innocence, which are fundamental aspects of criminal jurisprudence in India.⁸

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⁶ Ratanlal & Dhirajlal, *The Code of Criminal Procedure* 12–15 (LexisNexis 2020)

⁷ Anup Surendranath, *Media Trials and the Right to Fair Trial*, 5 *NUJS L. Rev.* 45, 47 (2012)

⁸ M.P. Jain, *Indian Constitutional Law* 1372 (7th ed. 2014)

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The evolution of media trials in India reflects the growing power and influence of the media in shaping public discourse about the justice system. While media involvement has sometimes helped expose investigative failures and ensure accountability, excessive or sensational reporting can undermine the principles of natural justice. Therefore, responsible journalism and appropriate legal safeguards are essential to ensure that media coverage supports rather than disrupts the administration of justice.

IV. CONCEPT AND TYPES OF DIGITAL EVIDENCE

Digital evidence has become an essential component of modern criminal investigations and judicial proceedings due to the widespread use of computers, smartphones, and internet-based communication. Digital evidence refers to any information or data of probative value that is stored, transmitted, or received in electronic form and can be presented before a court of law to establish facts relevant to a case.¹⁶ Unlike traditional physical evidence, digital evidence exists in intangible form and is usually stored on electronic devices such as computers, mobile phones, servers, or cloud-based platforms.¹⁷ With the rapid advancement of technology and the increasing role of digital communication in everyday life, digital evidence has gained significant importance in the administration of justice.¹⁸

The concept of digital evidence encompasses a wide range of electronic data that can help investigators

⁹ State (NCT of Delhi) v. Santosh Kumar Singh, (2010) 9 S.C.C. 747

¹⁰ Dr. Rajesh Talwar v. CBI, (2013) 14 S.C.C. 661

¹¹ Law Commission of India, 200th Report on Trial by Media 23–25 (2006).

¹² Manu Sharma v. State (NCT of Delhi), (2010) 6 S.C.C. 1.

¹³ Sahara India Real Estate Corp. Ltd. v. SEBI, (2012) 10 S.C.C. 603

¹⁴ Apar Gupta, *Social Media and Free Speech in India*, 10 IJLT. 112, 118 (2014)

¹⁵ Id.

¹⁶ Black’s Law Dictionary 673 (11th ed. 2019)

¹⁷ Eoghan Casey, *Digital Evidence and Computer Crime* 7 (3d ed. 2011)

¹⁸ K. Jaishankar, *Cyber Criminology: Exploring Internet Crimes and Criminal Behavior* 45 (2011)

reconstruct events, identify suspects, establish intent, and corroborate witness testimony. Digital evidence may include emails, text messages, photographs, videos, audio recordings, social media posts, browsing history, GPS location data, and system logs.¹⁹ Because such information can be easily created, modified, duplicated, or deleted, its collection and preservation require specialized forensic techniques. Digital forensic experts often use scientific methods to retrieve, analyse, and authenticate electronic data while maintaining the integrity of the evidence. In India, the admissibility and authenticity of electronic evidence are governed primarily by the provisions of the Information Technology Act, 2000 and the Indian Evidence Act, 1872, particularly Section 65B, which lays down the procedure for admitting electronic records in court.

Digital evidence can be broadly classified into several types based on the source and nature of the electronic data. One of the most common forms is computer-based evidence, which includes data stored on personal computers, laptops, or external storage devices such as hard drives and USB flash drives. This type of evidence may include documents, spreadsheets, emails, and software records that help investigators trace communications or financial transactions. Computer-based evidence is frequently used in cases involving cybercrime, fraud, and intellectual property violations.²⁰

Another important category is mobile device evidence, which is obtained from smartphones, tablets, and other portable communication devices. These devices store large amounts of personal and communication data, including call logs, text messages, multimedia files, application data, and location information. Because smartphones are widely used for communication and social interaction, they often contain crucial evidence in criminal investigations such as conspiracy, harassment, or financial crimes.

A third category is network and internet-based evidence, which includes data transmitted over digital networks. This type of evidence may consist of internet browsing history, email exchanges, server

logs, and online chat records. Such information can help investigators identify the origin of online activities, trace the identity of users, and establish the sequence of events in cyber-related offences. Social media platforms have also become a significant source of digital evidence, as posts, comments, messages, and shared content can reveal the intentions and actions of individuals involved in a case.²¹

Another significant form is multimedia evidence, which includes digital photographs, videos, and audio recordings. These forms of evidence are frequently used in criminal trials, surveillance investigations, and media-related cases. CCTV footage, video recordings from smartphones, and digital photographs can provide visual proof of events and help establish the presence of individuals at a particular location.¹⁴²²

Finally, cloud-based evidence has emerged as a new category due to the increasing use of online storage services and cloud computing platforms. Data stored in cloud servers may include documents, images, communication records, and backup files that are accessible through the internet. Investigating such evidence often requires cooperation from service providers and adherence to legal procedures for obtaining data from remote servers.¹⁵

Digital evidence represents a vital tool in modern legal systems, enabling investigators and courts to rely on electronic data to establish facts and determine liability. As technology continues to evolve, the scope and complexity of digital evidence will also expand, making it essential for legal professionals, investigators, and courts to develop expertise in handling, authenticating, and interpreting electronic information while ensuring compliance with legal standards.

V. LEGAL FRAMEWORK GOVERNING DIGITAL EVIDENCE IN INDIA

The rapid advancement of technology and the widespread use of digital devices have significantly transformed the nature of evidence used in criminal

¹⁹ Thomas J. Holt et al., *Cybercrime and Digital Forensics* 89 (2018).

²⁰ *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601 (India)

²¹ *Shafhi Mohammad v. State of Himachal Pradesh*, (2018) 2 SCC 801

²² *Tomaso Bruno v. State of Uttar Pradesh*, (2015) 7 SCC 178 (India).

and civil proceedings. As a result, the Indian legal system has gradually developed a legal framework to regulate the admissibility, authenticity, and reliability of digital or electronic evidence. Digital evidence includes any information stored, transmitted, or generated through electronic devices such as computers, mobile phones, servers, and cloud platforms. The legal framework governing such evidence in India is primarily derived from statutory provisions, judicial interpretations, and procedural laws designed to ensure the proper handling and admissibility of electronic records in courts.

One of the most important statutes governing digital evidence is the Information Technology Act, 2000.²³ This legislation was enacted to provide legal recognition to electronic records and digital signatures in India. The Act plays a crucial role in facilitating electronic commerce and cybercrime investigations by recognizing electronic documents as legally valid. It also introduced amendments to the Indian Evidence Act, 1872, thereby incorporating provisions specifically dealing with electronic evidence. These amendments were necessary to adapt the traditional rules of evidence to the realities of digital communication and data storage.

Under the Indian Evidence Act, the most significant provision relating to digital evidence is Section 65B, which governs the admissibility of electronic records in court. According to this provision, any information contained in an electronic record—such as emails, computer-generated documents, or digital images—may be admitted as evidence if it is accompanied by a certificate verifying the authenticity of the electronic record. This certificate must be issued by a responsible person who has control over the computer system that produced the record and must confirm that the data was generated in the ordinary course of activities. The requirement of a Section 65B certificate is intended to ensure the reliability and integrity of digital evidence before it is presented in judicial proceedings.

The Supreme Court of India has played a crucial role in clarifying the legal standards governing electronic evidence. In *Anvar P.V. v. P.K. Basheer*, the Court held that electronic records can be admitted as evidence only if the requirements of Section 65B are strictly complied with. The judgment emphasized that

²³ Id.

secondary electronic evidence without a proper certificate would generally be inadmissible. This decision marked a significant shift toward stricter compliance with statutory requirements for electronic evidence.

Later, the Supreme Court revisited the issue in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, where the Court reaffirmed the mandatory nature of the Section 65B certificate.²⁴ The Court clarified that the certificate is required whenever electronic evidence is presented in the form of a copy or secondary record. However, it also recognized certain exceptions where the certificate may not be required if the original device itself is produced before the court.

Apart from the Evidence Act and the Information Technology Act, procedural laws also play an important role in the collection and investigation of digital evidence. The recently enacted *Bharatiya Nagarik Suraksha Sanhita, 2023*, which replaces the Code of Criminal Procedure, includes provisions relating to electronic records, digital documentation, and technological methods in criminal investigations. These provisions aim to modernize investigative procedures and improve the efficiency of law enforcement agencies when dealing with digital crimes and electronic evidence.

In addition, law enforcement agencies rely on digital forensic techniques to collect, preserve, and analyse electronic data in a manner that maintains its integrity and chain of custody. Digital forensic laboratories and trained experts assist investigators in retrieving deleted data, analysing device logs, and authenticating digital records before they are presented in court.²⁵

The legal framework governing digital evidence in India consists of a combination of statutory provisions, judicial precedents, and procedural safeguards designed to ensure the authenticity and reliability of electronic records. Laws such as the Information Technology Act, the Indian Evidence Act, and the *Bharatiya Nagarik Suraksha Sanhita* collectively establish the rules for the admissibility and investigation of digital evidence. As digital

²⁴ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1 (India)

²⁵ K. Rosenblatt et al., *Digital Forensics: A Guide for the Legal Profession* 45–60 (2011)

technology continues to evolve, the legal system must continually adapt to address emerging challenges while maintaining the principles of fairness and justice in judicial proceedings.

VI. CHALLENGES OF DIGITAL EVIDENCE IN MEDIA TRIALS

The growing reliance on digital technology and electronic communication has significantly increased the use of digital evidence in criminal investigations and media reporting. Digital evidence includes electronic records such as emails, social media posts, CCTV footage, call records, audio recordings, and digital photographs. While such evidence can be extremely valuable in uncovering the truth, its use in media trials presents several legal and ethical challenges. When digital evidence becomes publicly available through media coverage before being properly examined by courts, it may influence public opinion and potentially affect the fairness of judicial proceedings.²⁶

One of the primary challenges is the risk of manipulation and tampering. Digital evidence can be easily edited, altered, or fabricated using modern technological tools. For example, videos and images can be manipulated through editing software or deepfake technology, making it difficult to determine their authenticity.²⁷ When media organizations broadcast such material without proper forensic verification, it can mislead the public and create a false narrative about a case. Courts generally require strict verification and authentication of electronic records before accepting them as evidence, but the media may not follow the same level of scrutiny.

Another significant challenge is the violation of the presumption of innocence. In criminal law, every accused person is presumed innocent until proven guilty by a competent court. However, media trials often present digital evidence such as leaked chat messages, CCTV footage, or call records in a manner

that suggests the guilt of the accused even before the trial begins. This premature disclosure can damage the reputation of individuals and influence public perception. In extreme cases, such coverage may create social pressure on investigators and courts, which can undermine the fairness of the judicial process.²⁸

A related issue is the leakage of confidential digital evidence during investigations. Investigative agencies often collect digital data such as phone records, forensic reports, and surveillance footage. When such material is leaked to the media during the investigation stage, it may compromise the integrity of the evidence and the secrecy of the investigation. Premature disclosure can alert suspects, influence witnesses, or interfere with the collection of additional evidence. Courts have repeatedly emphasized that investigative agencies must maintain confidentiality to protect the fairness of criminal proceedings.²⁹

Another challenge is the difficulty of verifying the authenticity and context of digital evidence in media reporting. Digital records may be presented in fragments or edited clips that do not show the full context of the communication or event. For example, a short video clip or partial conversation shared on television or social media may create a misleading impression if the surrounding circumstances are not explained. Without proper forensic examination and cross-examination in court, such evidence may be interpreted incorrectly by the public.³⁰

The rapid spread of information through social media platforms further complicates the issue. Once digital evidence is circulated on news channels or online platforms, it spreads quickly and becomes difficult to control or retract. This widespread dissemination can permanently shape public opinion, even if the evidence later proves to be inaccurate or inadmissible in court. In many high-profile cases, social media discussions and viral content amplify the effects of media trials and intensify public scrutiny.

²⁶ Shyam Divan & Arghya Sengupta, *Digital Evidence and Criminal Justice in India*, 5 Nat'l L. Sch. India Rev. 45, 48 (2020)

²⁷ Danielle Keats Citron & Robert Chesney, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 Calif. L. Rev. 1753, 1759 (2019)

²⁸ Sahara India Real Estate Corp. Ltd. v. Sec. & Exch. Bd. of India, (2012) 10 S.C.C. 603

²⁹ State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 S.C.C. 386

³⁰ Avnish Bajaj v. State (NCT of Delhi), 150 (2008) D.L.T. 769

Privacy concerns also represent an important challenge. Digital evidence often contains personal data, private conversations, or sensitive information. When such information is broadcast by the media without proper safeguards, it may violate the privacy rights of individuals involved in the case. The Supreme Court recognized the right to privacy as a fundamental right in *K.S. Puttaswamy v. Union of India*, emphasizing the need to protect personal data and confidential information.³¹ Media disclosure of private digital communications during trials may therefore conflict with constitutional protections.

Another issue relates to judicial prejudice and influence on witnesses. Extensive media coverage of digital evidence can influence potential witnesses or create preconceived notions about the case. Witnesses who watch media reports may unintentionally alter their testimony to align with widely publicized narratives. This can affect the credibility of evidence and complicate the task of courts in determining the truth.

While digital evidence has become an essential tool for modern criminal investigations, its use in media trials raises several serious challenges. Issues such as manipulation of digital data, violation of the presumption of innocence, leakage of investigative material, privacy concerns, and the rapid spread of unverified information can undermine the fairness of judicial proceedings. Therefore, it is essential for both media organizations and investigative authorities to exercise caution and responsibility when dealing with digital evidence, ensuring that the integrity of the justice system and the rights of individuals are adequately protected.

VII. COMPARATIVE PERSPECTIVE ON DIGITAL EVIDENCE AND MEDIA TRIALS

The issue of digital evidence and media trials is not unique to India; many countries face similar challenges in balancing the freedom of the press with the right to a fair trial. Different legal systems have developed distinct approaches to regulate media reporting and the use of digital evidence in criminal proceedings. A comparative perspective helps in understanding how various jurisdictions attempt to

³¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1

safeguard judicial integrity while preserving democratic principles such as transparency and freedom of expression.³²

In the United Kingdom, strict legal mechanisms exist to prevent media interference in ongoing trials. The primary legislation governing this area is the Contempt of Court Act 1981, which restricts the publication of material that may prejudice or interfere with active legal proceedings. Under this law, media organizations can be penalized if their reporting creates a substantial risk of serious prejudice to a fair trial. Courts in the United Kingdom are particularly cautious about releasing digital evidence such as CCTV footage, recorded conversations, or digital documents before they are formally presented in court. The strict contempt rules ensure that media coverage does not influence juries or the outcome of judicial proceedings.

In the United States, the legal approach is significantly influenced by the First Amendment to the Constitution, which guarantees strong protection for freedom of speech and the press.³³ Media organizations in the United States have broad rights to report on criminal investigations and court proceedings. However, courts also recognize the need to protect the fairness of trials, especially in cases involving juries. Judges may impose restrictions such as gag orders, change of trial venue, or sequestration of jurors to minimize the impact of media coverage.³⁴ A notable example highlighting the dangers of media influence on criminal trials is *Sheppard v. Maxwell*, where the U.S. Supreme Court held that excessive media publicity had deprived the accused of a fair trial.³⁵ The Court emphasized that trial judges have a duty to control the courtroom environment and limit prejudicial publicity.

In Canada, courts follow a balanced approach that protects both freedom of expression and the right to a fair trial. Canadian courts have the authority to impose publication bans on certain types of

³² Monroe H. Freedman & Abbe Smith, *Understanding Lawyers' Ethics 234–36 (5th ed. 2016)*

³³ U.S. Const. amend. I

³⁴ *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 563–64 (1976)

³⁵ *Sheppard v. Maxwell*, 384 U.S. 333, 362–63 (1966)

information, including digital evidence, if its disclosure could influence the outcome of a trial.³⁶ The Supreme Court of Canada developed the Dagenais–Mentuck test, which requires courts to consider whether restricting publication is necessary to prevent a serious risk to the administration of justice and whether such restrictions minimally impair freedom of expression.³⁷ This approach attempts to carefully balance media freedom with judicial fairness.

Similarly, in Australia, courts maintain strict contempt laws that prevent prejudicial media reporting during ongoing trials. Media organizations must avoid publishing digital evidence or investigative material that could influence the jury or create bias. Australian courts also rely on suppression orders to restrict the publication of sensitive information until the conclusion of the trial.³⁸ These measures are intended to preserve the impartiality of the judicial process while still allowing the media to report on legal developments.

Compared to these jurisdictions, India follows a somewhat more flexible approach. While the Constitution guarantees freedom of speech and expression under Article 19(1)(a), this right is subject to reasonable restrictions under Article 19(2). Indian courts have addressed media trial concerns through judicial decisions and the application of contempt laws. For example, in *Sahara India Real Estate Corp. Ltd. v. Securities and Exchange Board of India*, the Supreme Court introduced the concept of postponement orders, allowing courts to temporarily restrain the publication of information that could prejudice an ongoing trial. However, unlike some Western jurisdictions, India does not have a specific statute dedicated exclusively to regulating media trials.

The comparative analysis shows that different countries adopt varying legal strategies to address the challenges posed by digital evidence and media trials. While countries like the United Kingdom and

Australia rely heavily on strict contempt laws, the United States emphasizes press freedom but empowers courts to control prejudicial publicity. Canada adopts a balanced test-based approach, whereas India largely relies on constitutional principles and judicial precedents. Studying these comparative frameworks can help policymakers and courts develop more effective safeguards to ensure that the use of digital evidence and media reporting does not undermine the fairness and integrity of judicial proceedings.

VIII. RECOMMENDATIONS FOR REGULATING DIGITAL EVIDENCE IN MEDIA TRIALS

The increasing role of digital evidence in criminal investigations and media reporting has created significant challenges for the administration of justice. While digital technology enhances transparency and provides valuable information to the public, unregulated disclosure of digital evidence in media trials can compromise the fairness of judicial proceedings. Therefore, it is necessary to establish clear legal and ethical safeguards to ensure that digital evidence is handled responsibly by investigative agencies, courts, and media organizations. The following recommendations may help in maintaining a balance between freedom of the press and the right to a fair trial.

1. Strengthening Legal Guidelines for Media Reporting

One of the most important steps is the formulation of clear legal guidelines for media reporting of ongoing investigations and trials, particularly when digital evidence is involved. At present, Indian law largely relies on constitutional principles and judicial precedents to regulate media trials. A comprehensive regulatory framework could specify the limits of reporting digital evidence before it is examined in court. Such guidelines should prevent the publication of sensitive materials like leaked chats, CCTV footage, or forensic reports during the investigation stage unless authorized by the court.

2. Strict Enforcement of Contempt Laws

Courts should strictly enforce laws that prohibit publications likely to prejudice judicial proceedings. The Contempt of Courts Act, 1971 already empowers

³⁶ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, § 2(b)

³⁷ *R. v. Mentuck*, [2001] 3 S.C.R. 442 (Can.); *Dagenais v. Canadian Broad. Corp.*, [1994] 3 S.C.R. 835 (Can.)

³⁸ *John Fairfax Publ'ns Pty Ltd v. District Court (NSW)* (2004) 61 NSWLR 344 (Austl.)

courts to take action against individuals or media organizations whose reporting interferes with the administration of justice. Greater use of these provisions can deter irresponsible disclosure of digital evidence that may influence public opinion or witnesses before the trial concludes.

3. Judicial Control Through Postponement Orders

Courts should make greater use of postponement or temporary publication restrictions in cases involving sensitive digital evidence. The Supreme Court in *Sahara India Real Estate Corp. Ltd. v. Securities and Exchange Board of India* recognized the power of courts to issue such orders to prevent prejudicial publicity. By temporarily restricting the publication of certain digital records, courts can ensure that the evidence is evaluated objectively during the trial rather than being debated prematurely in the media.

4. Strengthening Digital Forensic Infrastructure

Another important recommendation is the improvement of digital forensic capabilities within investigative agencies. Advanced forensic laboratories and trained experts are necessary to verify the authenticity and integrity of electronic evidence before it is presented in court. Reliable forensic analysis can reduce the risk of manipulated or fabricated digital evidence being circulated through media channels.

5. Protection of Privacy and Personal Data

Digital evidence often contains sensitive personal information, including private conversations, location data, and personal photographs. Media disclosure of such information can violate an individual's privacy rights. The Supreme Court in *K.S. Puttaswamy v. Union of India* recognized privacy as a fundamental right under Article 21 of the Constitution. Therefore, laws and guidelines should ensure that digital evidence containing personal data is not disclosed to the public without proper legal justification.

6. Media Self-Regulation and Ethical Journalism

Media organizations should adopt stronger self-regulatory mechanisms and ethical standards when reporting on criminal investigations involving digital evidence. Journalists should verify the authenticity of electronic material before broadcasting it and should avoid sensationalism that may prejudice the outcome

of a trial. Responsible journalism requires presenting facts objectively rather than promoting speculative narratives.

7. Training and Awareness for Legal and Media Professionals

Training programs should be conducted for judges, prosecutors, investigators, and journalists to improve their understanding of digital evidence and its legal implications. Such training can help ensure that digital evidence is collected, preserved, and reported in accordance with legal standards. Awareness about the risks associated with digital manipulation and misinformation is essential for all stakeholders involved in the justice system.

8. Development of Specialized Rules for Digital Evidence in Media Trials

Finally, there is a need for specialized procedural rules addressing the use and publication of digital evidence in media trials. These rules could clarify when digital evidence may be publicly disclosed, how investigative agencies should safeguard electronic data, and what penalties should apply for unauthorized leaks. A clear legal framework would help reduce confusion and promote responsible use of digital information.

IX. CONCLUSION

The growing intersection between digital evidence and media trials has significantly transformed the landscape of the criminal justice system in India. With the rapid expansion of digital technology, information is generated, stored, and transmitted through electronic devices such as smartphones, computers, surveillance systems, and social media platforms. As a result, digital evidence has become an indispensable component of modern investigations and judicial proceedings. At the same time, the rise of 24-hour news channels and digital media platforms has intensified public scrutiny of criminal cases, often leading to parallel media trials that may influence public perception before the courts reach a final decision.

The Indian legal system has gradually adapted to these technological developments through statutory reforms and judicial interpretations. Laws such as the Information Technology Act, 2000 and the Indian

Evidence Act, 1872 (along with its modern counterpart, the Bharatiya Sakshya framework) provide the legal foundation for the recognition and admissibility of electronic records. Judicial decisions such as *Anvar P.V. v. P.K. Basheer and Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* have clarified the procedural requirements for admitting digital evidence, particularly the importance of authentication through certification. These legal developments reflect the judiciary's attempt to ensure that electronic records presented before courts maintain their reliability and evidentiary value.

However, the use of digital evidence in media reporting presents serious challenges. Premature disclosure of electronic records—such as leaked chats, CCTV footage, or audio recordings—can create bias in public opinion and potentially interfere with the fairness of trials. The media's portrayal of digital evidence may sometimes be incomplete or speculative, which risks undermining the fundamental legal principle that an accused person is presumed innocent until proven guilty. Furthermore, the widespread circulation of such evidence through television and social media platforms can lead to violations of privacy, reputational harm, and pressure on investigators and judicial authorities.

Indian courts have acknowledged these concerns and attempted to balance competing constitutional values. While the freedom of speech and expression under Article 19(1)(a) protects the role of the media in informing the public, the right to a fair trial under Article 21 remains equally important. In *Sahara India Real Estate Corp. Ltd. v. Securities and Exchange Board of India*, the Supreme Court recognized the power of courts to issue postponement orders to prevent prejudicial media coverage during ongoing trials. Similarly, the recognition of the right to privacy in *K.S. Puttaswamy v. Union of India* highlights the need to protect personal digital data from unnecessary public exposure.

Ultimately, the challenge lies in maintaining a delicate balance between transparency, media freedom, and judicial fairness. Digital evidence undoubtedly enhances the ability of investigators and courts to uncover the truth, but its misuse or premature disclosure in media trials can compromise the integrity of the justice system. Therefore, effective legal regulation, responsible journalism,

strong forensic verification, and respect for constitutional safeguards are essential for ensuring that digital evidence is used appropriately.

In conclusion, as technology continues to evolve and digital information becomes increasingly central to criminal investigations, the Indian legal system must continue to refine its approach toward digital evidence and media reporting. By developing clearer guidelines, strengthening institutional safeguards, and promoting ethical media practices, the justice system can ensure that digital evidence serves the cause of justice without undermining the fundamental rights of individuals or the fairness of judicial proceedings.

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