From Media Trial TP Social Media Trial: Constitutional Limits of Prejudicial Publicity and The Right to Fair Trial in India

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***Abstract*— "Trial by media" is a phrase that has traditionally been used to refer to coverage of news that goes beyond the simple act of reporting and begins to create a public verdict regarding guilt, credibility or character before trials are completed. That's a problem that has been transformed by social media in terms of scale and structure. Prejudicial stories spread through video clips, websites, influencer posts, live streams, hashtags, short-form video, anonymous accounts and algorithmic recommendation systems. The outcome is a shift from a relatively concentrated media trial towards a "social media trial" that is participatory and ongoing, where accusations, leaked information, parts of the video and imaginary statements can be reproduced within a matter of minutes. This paper examines the constitutional limits of such prejudicial publicity in India by looking at the doctrines of Article 19(1)(a), Article 19(2), Article 21, Article 14, Article 129, Article 215 of the Constitution along with the Contempt of Courts Act, 1971, criminal-procedure safeguards and some important Supreme Court decisions. It says that the Constitution of India doesn't call for a "choice" between the freedom of the press and a fair trial. Instead, the jurisprudence is directed towards a balanced system that is grounded on the presumption of innocence, open justice, necessity, proportionality and narrowly targeted preventive measures.**

The paper makes a clear distinction between public-interest reporting in the press and papers which cause a real and substantial prejudice to adjudication. It also singles out regulatory failures arising from the decentralized nature of social-media speech, and the ability to repeat, archive, and broadcast it virally forever. The paper suggests a rights-compatible approach that focuses on exceptional measures of postponement of court proceedings, on the need for collegial dialogue and communication between police and media, on more robust court-procedure platforms to enable court-approved restrictions, on privacy protection and on digital media literacy and professional norms that ensure judicious reporting without transforming publicity into sentimentality or into adjudication.

***Index Terms*—Article 21, fair trial, freedom of speech, prejudicial publicity, social media trial, trial by media.**

I. INTRODUCTION

A free press is of fundamental importance to constitutional democracy. Criminal investigation and adjudication reporting can reveal institutional shortcomings and can provide information to citizens, enhance accountability and provide opportunities for scrutiny of the exercise of coercive state power. But publicity can be harmful when it implies that contentions made by the media are true, when it assumes guilt of a suspect before a trial, when it spreads a confession or evidence that is not admissible in court, when it defames witnesses, when it reveals protected identities or when it encourages the trial to be a popularity contest. The question in the constitution is not whether the media can report criminal cases, but where reporting becomes legitimate and interfering with the administration of the law becomes illegal.

This tension has been expressed by the Supreme Court on many occasions. The press is protected under Article 19(1)(a) as it is a part of the right to freedom of speech and expression, although the Constitution does not specifically mention a "freedom of the press." While on the other hand the protection of life and personal Liberties enshrined in Article 21 also include a fair criminal process. Presumption of innocence, effective defence, impartial adjudication and protection against prejudicial interference are part and parcel of the rule of law. There are other tools to help safeguard the administration of justice, namely the law

on contempt, and the powers of superior courts set out in the constitution.

This balance is more challenging with digital communication. With traditional media, editors have control and can be easily recognized for professional and legal responsibility. Social media empowers hundreds of millions of users to publish. Social media makes publication possible for hundreds of millions of users. A television debate can be cut, captioned, edited and re-posted; a police statement can be turned into a viral hashtag; an unconfirmed claim can gain seemingly widespread credibility as it's repeated; and content can stay findable long after it's been rejected by a court. The "trial" is no more limited to journalists. Can be crowd sourced by users, influencers, political actors, fan communities, automated accounts and recommendation systems.

Three questions are addressed in this paper: (1) What constitutional principles apply to prejudicial publicity in pending criminal cases? (2) What shift in the nature of the fair-trial risk occurs when mass media is replaced with social media? and (3) What are the remedies to address the nature of the fair-trial risk without imposing an overbroad prior restraint on public discussion? The analysis has a doctrinal and normative character. It's geared towards Indian constitutional law and Supreme Court case law, and considers the modern social-media landscape as the context in which the older concepts now play their role.

II. RESEARCH METHOD AND SCOPE

The paper is doctrinal legal paper based on legal research. Primary sources refer to Constitution of India, Contempt of Courts Act, 1971[1], Bharatiya Nagarik Suraksha Sanhita, 2023, Press Council Act, 1978 and the top decisions of the Supreme Court in the field of journalism. The cases discussed in this discussion are R. K. Anand vs Registrar, Delhi High Court, Sidhartha Vashisht (Manu Sharma) vs State (NCT of Delhi), Sahara India Real Estate Corp. Ltd. vs Securities & Exchange Board of India and M. P. Lohia vs State of West Bengal and Nipun Saxena vs Union of India[2]. The paper does not take a stance on guilt or innocence, but it does seek to ascertain standards in the Constitution.

This analysis only addresses publicity that could impact the pending or imminent criminal process or rights of accused persons, victims and witnesses. It does not deny that it is permissible to comment generally on crime or courts. It does not consider criticism of judgments, investigative journalism or good faith discussion of systemic failures to be prejudicial publicity. The focus is around publication that can lead to the use of public accusation in place of legal evidence, or interfere with the proper and orderly conduct of an adjudicative proceeding.

III. FROM "MEDIA TRIAL" TO "SOCIAL MEDIA TRIAL"

There is no one statutory definition of a 'media trial'. It is more appreciated as publicity that takes the role of investigation, prosecution or adjudication of the media. When coverage employs notions of certainty of guilt, conduct accusatory dialogue, circulates material that hasn't been tested by the court or when it portrays the judicial process as a struggle between public discourse and the facts, there's a risk. In Manu Sharma, the Supreme Court highlighted the importance of drawing a distinction between informative media and trial by media and warned of interfering with the investigation and defence rights of the accused.

Each aspect of this phenomenon is changed through social media. Firstly, it's an instant, recursive publication: one post can result in thousands of follow-on posts. Second, the architectural emphasis is rewarding attention, manifesting itself especially in emotionally charged or simplified statements. Thirdly, when excerpts from documents, videos or hearings are shared, they lose their context and the qualifications attached to the original documents are not included. Finally, anonymity and pseudonymity may dampen the impact of traditional professional discipline. Fifth, corrective speech is asymmetrical because of virality: if a person is later acquitted, told the truth or retracted, it might only reach a part of the group that heard the initial accusation[3].

[1] Contempt of Courts Act, 1971, No. 70 of 1971, India Code.

[2] *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

[3] *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1.

This "social media trial" is not, therefore, simply a media trial that takes place on a new platform. It is a public adjudicatory process that is distributed. Users gather bits, recognize potential suspects, try to work out the motive and look at the credibility of the witnesses and make conclusions. Hashtags facilitate the focus on a desired narrative; recommender systems can serve to show the same claims to users over and over; online communities may reach out to or harass parties and witnesses. The harm done to the constitutional rights can be extended beyond courtroom to dignity, privacy, reputation and personal security.

IV. CONSTITUTIONAL ARCHITECTURE: SPEECH, FAIR TRIAL AND ADMINISTRATION OF JUSTICE

4.1. Article 19(1)(a) and the Public Interest in Reporting

The freedom of speech and expression is protected under article (19(1)(a)). It has a particularly high democratic value when it relates to speech in the context of courts, policing, prosecution and public institutions. Good reporting of court proceedings helps to ensure open justice and enables the public to judge the use of state power. The Contempt of Courts Act specifically provides for the protection of fair and accurate reports of court proceedings, with conditions. Any constitutionally based remedy for prejudicial publicity needs to start with a presumption for openness and not for secrecy[4].

It is a constitutional safeguard, however, that is not a license to turn a charge into a conviction. Words of contempt of court, defamation and other reasonable restrictions are permitted under Article 19(2). Fundamentally (in a constitutional sense), rights exist together. Where the interest is in the presentation of the speech, it is necessary to take into account Article 21 interests where the public nature of the proceedings threatens to compromise their fairness. The determining factor isn't whether it's uncomfortable for the accused, or critical of the system of justice, it's whether the content, timing, reach and context create a legally identifiable risk to the administration of justice.

4.2. Article 21, Presumption of Innocence and Fair Procedure

There has been a longstanding understanding that Article 21 mandates procedure to be fair, just and reasonable. This encompasses the opportunity to defend oneself and a fair trial in accordance with law and evidence in the criminal process. Presumption of innocence is at the heart, for in this case the burden of proof falls on the Government to establish guilt in accordance with a set of legally defined procedures. Boxing a reputation can be done by publicizing any possible guilt before judges are even in court, assuming they have already been professionally equipped to make judgements. It can also have an impact on witnesses, investigation and selection, party conduct and the overall context within which a trial is held.

Supreme Court cautioned in Manu Sharma that the legal presumption of innocence cannot be struck down at the threshold by media trial and that protection be linked with article 21. The argument doesn't have to be that judges are presumed to be easily influenced by publicity. The concern is institutional, as it is important that the adjudicative power be left to the court and that the accused have the safeguards of criminal procedure rather than be subjected to an "informal" parallel procedure without any obvious safeguards of evidence.

4.3. Articles 129 and 215 and the Contempt Jurisdiction

The Supreme Court and the High Courts are respectively recognised as courts of record under Article 129 and 215 respectively to punish for contempt. Defines and regulates contempt, and safeguards the fair reporting and fair criticism following the hearing and final resolution of a case under the Contempt of Courts Act, 1971. Contempt law is relevant in relation to prejudicial publicity as publications can hinder, interfere or impede the administration of justice. But it is not a censorship mechanism that should be used in general. The constitutional requirement is precision: limitations can only be imposed because of a real judicial threat; they can't just be imposed because someone is embarrassed, criticized or having an impassioned public debate.

[4] Constitution of India.

V. THE SUPREME COURT'S JURISPRUDENCE ON PREJUDICIAL PUBLICITY

5.1. R.K. Anand: Reputation, Public Perception and the Proper Role of Media

R.K. Anand emerged from a sting operation relating to an ongoing criminal trial, and led to a discussion of the tie between journalism and the court. This recognition "recognised the serious damage that television and newspaper accounts could inflict on a reputation and the fact that such accounts could lead to a general perception of guilt regardless of the ultimate outcome. It also reiterated the need for the media to "do journalism, not be a special investigative arm of the court. This is the general rule – institutional separation – which allows journalism to uncover and expose, but which still subjects adjudication to the rules of law[5].

5.2. Manu Sharma: Informative Media versus Trial by Media

The Manu Sharma judgment is a clear expression of the Indian position. The Court appreciated the role of the print and electronic media, but found that media activities should not impinge upon the fair investigation nor the right of defence. It said that Article 19(1)(a) has to be exercised with great caution in the case of "sub judice" and urged to make every effort to preserve the separation between "trial by media" and "informative media". This distinction is still relevant with regard to social media: it is not a problem if the discussion is intense, and a problem only if it impinges on the right to procedural fairness or entails the police and military taking on judicial power[6].

5.3. Sahara: "Real and Substantial Risk," Necessity and Proportionality

Sahara India Real Estate Corp. Ltd. v. SEBI is the main decision to the issue of preventive restrictions. A Constitution Bench agreed that in appropriate situations, the publication of supreme court orders could be deferred for a "limited period" when the "real and substantial prejudice" to the "fairness of proceedings" or "proper administration of justice" is apparent. It's a prevention order and it's supposed to be "narrowly" drawn. The Court highlighted the need for necessity, absence of reasonable alternative means, and proportionality in terms of the protection achieved with the means of infringement on expression[7].

Sahara is particularly relevant in the platform age as it rejects both the extremes. It does not have an absolute to publish anything about an ongoing case, but it does not grant the commonplace gag order either. A court shall determine what the specific risk is and the least restriction that is effective. This may be translated into digital spaces: If a specific piece of content presents a certain danger, then a specific and time-limited order can be more constitutionally defensible than general word or hashtag bans or general rules about reporting on certain categories of content.

5.4. M.P. Lohia and the Problem of Commentary During Pending Proceedings

In M.P. Lohia, the Supreme Court was concerned about the publication of any material of the merits of a pending criminal matter and noted that there could be interference with the administration of justice if the material was published. The ruling is an example of why timing is important. The legal consequences of commentary that is not objectionable after final adjudication might be different when witnesses are not yet being called, when evidence is being gathered or when a court is actively determining disputed facts[8].

Prejudicial publicity does not only pertain to the rights of the accused. Uncontrolled publication may cause serious harm to victims and witnesses, as well. In Nipun Saxena, the Supreme Court took a liberal view of "media" and interpreted it to cover not only press media but electronic and social media as well and held that the identity of sexual-offence victims must not be disclosed in any manner, direct or indirect. The Court also warned against sensationalism and said that sensitive reporting is to be exercised. It's an important factor for social media trials because if a name is not included, doxxing is the ability to identify and share

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[5] *R.K. Anand v. Registrar, Delhi High Court*, (2009) 8 SCC 106.

[6] *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.*, (1988) 4 SCC 592. Sci API

[7] *Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India*, (2012) 10 SCC 603.

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

contextual clues via crowdsourcing, which can unmask the identity[9].

VI. WHY SOCIAL MEDIA INTENSIFIES FAIR-TRIAL RISKS

The previous cases' constitutional standards continue to apply, but the assessment of the risk of harm should take into consideration digital amplification. There are four special characteristics which are particularly important. The first is scale – prejudicial material can spread to millions of people before a court can act. The second is persistence - copies, screenshots and mirrors can survive the deletion. The third aspect is personalization: algorithmic systems can be constantly suggesting similar content, thus forming a thicket of information around a single story. The fourth involves participatory escalation: Users can escalate from commenting to naming witnesses to contacting families, publishing addresses, and organising harassment or pressuring institutions[10].

This is because these characteristics make such a division between publisher and audience difficult. A news story can be published without judgment, but a news clipping can be republished with a caption on the top that says Guilty. A claim that has no basis, however, that is being shared by an anonymous account can be picked up by the mainstream media as it catches on. Analyzing the content and effects of publication, and looking at who is involved in its creation, endorsement and amplification, should be the focus of the legal analysis. Technical intermediation doesn't always translate to editorial authorship, but neither does virality mean it's an irrelevancy under the constitution.

There is another issue, of contamination of the evidence memory. A person who is going to be a witness can see the same event multiple times prior to providing testimony. Identification sessions in the Internet can lead to witnesses viewing images of suspects not in a formal context. The leaked statements can create a “shaping effect” on the subsequent statements. All these risks are not sufficient to establish that every viral case is unfair; they are indications of why the court should need a fact sensitive approach to determine if a specific amount of publicity has gone beyond a public discussion to one that poses a genuine and substantial risk to the process.

VII. EXISTING LEGAL AND REGULATORY SAFEGUARDS

7.1 Contempt of Court and Judicial Orders

The Contempt of Courts Act still exists and is significant but limited protection. It safeguards fair and accurate reporting of judicial proceedings about which action it is unable to prevent if such publication "substantially interferes" with the administration of justice. The statutory scheme is supplemented by carefully-drafted postponement orders in the Sahara. This approach has merit in terms of judicial control - restrictions are linked to a specific proceeding and can be subject to necessity and proportionality tests. Its downside in digital cases is that it's not fast enough. The content might be reproduced by the time it comes before the hearing[11].

7.2 Criminal Procedure, Open Courts and Protected Proceedings

The general statutory framework of criminal procedure has now been provided by the Bharatiya Nagarik Suraksha Sanhita, 2023[12], effective from 1st July, 2024. While open adjudication continues to be a goal of criminal justice, there are protections for openness such as in-camera treatment and publication restrictions in certain sensitive categories. These exceptions illustrate a general rule: Transparency should be the rule, although there are exceptions that allow for the protection of privacy, dignity, and evidentiary fairness where the purposes of justice would be defeated by all-public exposure.

7.3 Press Council Norms and Self-Regulation

The Press Council Act, 1978[13] was enacted to safeguard press freedom and ensure and promote

[9] Press Council of India, *Norms of Journalistic Conduct* (2022).

[10] *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1. Sci API

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

[12] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, India Code.

[13] Press Council Act, 1978, No. 37 of 1978, India Code.

journalistic standards. The Norms of Journalistic Conduct that the Council has adopted encourage restraint and caution and aim to achieve a balance between freedom and responsibility. Professional norms are important because many of the negative practices can be avoided even before the limits of what is considered contempt or judicial restraint are met. The institutions that are able to influence print-based self-regulation, however, do not fit into the broken social-media landscape. Actors who are not journalists and don't care about professional codes may be the reason behind a social media trial.

VIII. A CONSTITUTIONAL TEST FOR PREJUDICIAL PUBLICITY IN THE SOCIAL-MEDIA AGE

Such meaningless language as ‘negative publicity' or ‘sensational coverage' should be avoided in a workable constitutional approach. The real and substantial risk to a pending proceeding should be the question posed by the courts rather than whether a specific publication or identifiable stream of publication creates a risk. These include the nature of the proceeding, nature of the material, repetition and spread of material, proximity of the publication to the issues, the vulnerability of witnesses, victims or identification procedures or the availability of less restrictive alternatives, all drawn from the principles of the Sahara.

It's essential that the content is suitable. When an arrest has taken place, a summary of an order, the charges or a criticism of investigative delay, generally falls at the heart of protected public interest journalism. Any publication that suggests guilt as a fact, prints an untested confession, provides evidence that should be kept under seal and cannot be presented, stages an ID procedure, intimidates witnesses, reveals protected identities, or selectively leaks to a publication to make it look like it has "The Proof" is of particular concern. The constitutional analysis needs to be contextual in nature, not categorical.[14]

Table 1. Proposed Rights-Balancing Matrix for Pending Criminal Cases

Factor	Lower Fair-Trial Risk	Higher Fair-Trial Risk
Stage	Post-judgment commentary	Investigation, identification, witness examination or active fact-finding
Content	Accurate procedural reporting; legal analysis	Unverified confession; declaration of guilt; leaked protected evidence
Reach	Limited, contextualized audience	Viral, repeated, cross-platform amplification
Target	Institutional criticism	Witness intimidation, doxxing, victim identification or personalized vilification
Correctability	Prominent correction reaches same audience	Persistent copies and algorithmic recirculation
Remedy	Counter-speech, clarification, ordinary legal remedies	Targeted postponement/removal or protective order where strict test is met

IX. REFORM PROPOSALS

It should be expressly invoked by the courts when engaging in digital prejudicial publicity first. Firstly, the courts should apply the Sahara framework explicitly in cases of digital prejudicial publicity. Orders must specify the specific material, the proceeding which is in jeopardy, the length of time the order will last and why alternatives are not suitable. A restriction should be as content specific as possible rather than a restriction of a platform, speaker, topic or class of speakers. It is important to review periodically because the grounds for the restraint may go away

[14] *State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386. The Supreme Court's discussion is particularly relevant because it addresses trial by press/electronic media and the rule of law. Sci API

after a witness has testified, or after a stage in the procedure.

Secondly, the interaction between police and media should be designed to provide the information while avoiding any pre-judgments. Official briefings should separate allegations from proven facts and should not include theatrical presentations of alleged culprits as guilty, nor should it reveal legally confidential information, nor should it reveal information that could lead to identification of a person or affect the ability of a witness to give evidence. The state has a special constitutional responsibility, since the accusation of an official is strong and may lead to a wide-spread amplification in the internet.

Third, the digital platforms need to have streamlined processes for issuing genuine court orders on protected identities, witness safety, and narrowly drawn postponement orders. The goal shouldn't be private adjudication of guilt or truth by platforms, but to ensure that lawful judicial procedures are implemented in an accurate, transparent and, where applicable, with notice, and with a way to challenge overbroad requests.

Fourth, the media, especially professional ones, should use checks for high-profile criminal reporting that reflect the principle of "fair trial." These should involve confirmation about spills, labeling of allegations, no graphic and hashtags that will declare guilt, clear separation of news from opinion, protection of witnesses and protection of identification procedures, and prominent corrections. Such newsroom procedures build on the Press Council's principles of responsibility and restraint[15].

Finally, fifth, legal literacy on pending criminal cases should be introduced into the field of media and information literacy. The use of the internet brings its own risks, such as that an arrest does not equate to conviction, a charge sheet is not a confession of guilt, a viral clip may not be complete, and decisions of a judge must be based on evidence presented to him/her in a procedure and allowed for. This fits into the larger issue of media literacy as a value of democracy and the rule of law which the conference is concerned about.

Lastly, remedies should be for all those who engage in the justice process. Social media trials may demonize or cause re-traumatization of the victims, pressure witnesses and the loss of trust in courts, and expose minors. A rights-based approach should, therefore, incorporate the fundamental rights of fair trial, privacy and dignity, expression, open justice and should not be limited to an "accused" versus "media" debate.

X. DISCUSSION

The foundational principles of countering prejudicial publicity are already embedded in the Indian Constitution which has in itself, principles such as the freedom of expression, reasonable restrictions, fair procedure, contempt jurisdiction, open justice and proportionality. The big hurdle is institutional adaptation. New rules for newspapers and radio and TV broadcasters are needed in a context where content is being copied by users, commented upon and disseminated via automated systems. To downplay the constitutional standards for restraint is not warranted. Contrastingly, the importance of narrow tailoring is increased with decentralized speech since wide restrictions would serve to inhibit lawful speech by a large number of people with no relationship to the prejudicial material.

Rather than allaying the general fear of publicity, it is preferable to separate the risk of a particular publication from the fear of publicity overall. Evidence of a real and substantial risk should be required and procedural stage and likely pathways of prejudice should be considered by the courts. Meanwhile, there is an opportunity for actors with institutional authority – police agencies, prosecutors, professional newsroom and platforms as a result of court orders – to implement preventive practices to minimize the need for coercive restrictions. A hybrid approach of constitutional adjudication, professional responsibility and media literacy.

It is also significant conceptually that the transition from a media trial to a social media trial suggests the shift from formal to informal modes of communication and increased opportunities for personal agency. Not who the speaker is, but preserving adjudication per the law, is the constitutional concern. The fact that a prejudicial statement is made by a single person doesn't render it harmless, it's a statement by a news channel. However, the solutions might be different as the scope, purpose, scope, and legal obligations of the

[15] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

actors vary. In principle, therefore, constitutional analysis ought to be technologically neutral, but in practice it must be technologically informed.

XI. CONCLUSION

The right to report, discuss and comment on criminal justice is a democratic need and the right to a fair trial is a constitutional right. Indian legislation does not put these values in a forever hierarchy. Reconciliation on the other hand is upheld by Supreme Court jurisprudence in terms of context, necessity and proportionality. Manu Sharma sheds light on the distinction between informative reporting and trial by media; R.K. Anand spells out the reputational and institutional risks of hasty public verdicts; Nipun Saxena shows the need for privacy and sensitive reporting in both traditional and social media; and Sahara offers a disciplined yard stick to test for exceptional preventive restrictions.

This exacerbates the issue because social media accelerates and socializes prejudicial narratives, which are made quick, participatory, persistent and algorithmically enhanced. The answer should, however, be able to withstand general censorship. A more constitutionally coherent road is taken by a combination of targeted judicial orders, official communication, professional reporting standards, protecting victims and witnesses, and platform adherence to lawful and specific directions, and media literacy. It is not intended to shield courts from criticism. It is to make sure that public opinion is aligned with the core principle that guilt is decided by courts, based on evidence and law—not on hashtags, viral posts or a ‘parallel verdict.

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