

---

# **MEDIA TRIALS AND ITS INFLUENCE ON THE JUDICIAL SYSTEM**

---

Ambika Roychowdhury, Symbiosis Law School, Pune

## **ABSTRACT**

The purpose of a democratic society is to allow civilians to be governed, legislated and adjudicated by peers. In a world becoming highly dependent upon artificial intelligence, social media and the internet, it is in the interests of every person to have institutions that are backed solely by hard evidence and incorruptible data.

In that vein it is of the utmost importance that the judiciary which holds in balance the fate of many, remains absolutely free of influence and corruption; so that every individual can seek and attain true justice. The phenomenon of a media trial, where common citizens are pronouncing judgement on supposed accused individuals is a grave miscarriage of justice. The old adage, 'Innocent until proven guilty' is the cornerstone to our justice system, enshrined in the Basic Structure of the Constitution.

This paper therefore seeks to examine what a media trial constitutes, who it affects, what happens in the aftermath and after thorough research proposes suggestions to curb the same.

## Introduction

As it was rightly said by Justice Rajeev Singh, the concept of fair trial entails balancing the interest of the accused, the victim, society and the community with the help of the agencies of State.<sup>1</sup> The right to fair trial is embodied under Article 21 of the Constitution. It is a right which is sacrosanct in a democratic society. It is widely accepted to be at the heart of criminal jurisprudence.<sup>2</sup> A fair trial can be defined as one which is without any prejudice or bias for or against the accused, the cause which is being tried, or the witnesses. The Supreme Court has aptly pronounced that a fair trial is one that takes place before an impartial judge, a fair prosecutor and an atmosphere of judicial calm.<sup>3</sup>

The world currently is enmeshed in what it is called the 'Social Media Era'. Information is being disseminated to the public at a rate never seen before by both verified and unverified sources. In the legal sphere, this information is widely affecting the legal process through a phenomenon popularly known as a 'Media Trial.' It can be described as when a case due to its controversial nature or individual involved attracts extreme press attention and thus scrutiny by the entire community.

This research paper hence seeks to examine how the current popular culture trend of media trials plays into the process of a fair legal proceeding. A special emphasis is given on criminal trials that were sensationalised by the media, and the laws protecting the interests of the accuseds and victims in that sphere. Due to the delicate nature of the matters they are pertinent to the research at hand and how the situation affects the citizens as a whole.

## Critical Analysis

In India, the process of a criminal trial had been enshrined in the erstwhile Criminal Procedure Code (hereinafter, *the Code*), currently the principles are adopted adjacently to the Bharatiya Nagarik Suraksha Sanhita (hereinafter, *BNSS*). While, the Right to a Fair Trial is protected under the Constitution of India<sup>4</sup> the procedure to ensure the same is defined in BNSS. The legislation thus in various ways ensures the sanctity of free trial in India, which are enlisted

---

<sup>1</sup> Withdrawal of Criminal Cases by State Government vs. State of UP and Ors. MANU/UP/0229/2017.

<sup>2</sup> Rattiaran vs. State of Madhya Pradesh 2007 CR ILJ 3955.

<sup>3</sup> Zahira Habibullah Sheikh and Ors. Vs. State of Gujarat AIR 2006 SC 1367.

<sup>4</sup> INDIA CONST., Art 22.

below.

India adopts the accusatorial method of adversarial system of legal procedure. This system of criminal trial works under the assumption that the State shall use its investigative agencies and government counsels will prosecute the wrongdoer who will take the recourse of the best counsels to challenge the evidence presented by the Prosecution.<sup>5</sup> Further, if the Supreme Court in its judgement is under suspicion that the parties did not get a fair trial the Court can examine the case under the erstwhile Indian Evidence Act, 1862<sup>6,7</sup>

In the judgement of *Babu Singh* the assumption of the innocence of the wrong doer is of cardinal importance in the administration of justice.<sup>8</sup> The principle of 'Innocent until proven Guilty.' is held to be of paramount importance in the legal system.<sup>9</sup>

Furthermore, BNSS explicitly prohibits trial of a case by a judge or a magistrate in which he is a party or otherwise personally interested.<sup>10</sup> Thus, this condition is double edged, it depends on the impartiality of judges as well as the independence of the judicial system as protected by the Constitution.<sup>11</sup>

The rights of the Accused as protected by BNSS and the Constitution of India are as follows:

- 1. Protection against illegal arrest-** an accused who is arrested must be informed of the grounds of their arrest either orally or by conduct.<sup>12</sup> This provision is held mandatory by the Apex Court, so much so that if the arrested individual is not informed the grounds of their arrest, the detention would be illegal.<sup>13</sup>
- 2. Knowledge of Accusation-** this provision is defined in BNSS by ensuring that the Accused has the right to be provided a copy of the police report and other necessary documents without delay.<sup>14</sup>

---

<sup>5</sup> K.N.C. Pillai (ed.), R.V. Kelkar's Criminal Procedure, pg. 336 (5th edn.)

<sup>6</sup> Indian Evidence Act, S.165, Acts of Parliament, 1872

<sup>7</sup> Himanshu Singh Sabharwa v. State of M.P. Ors AIR 2008 SC 1943

<sup>8</sup> Ram chander v. State of Haryana (1981) 3 SCC 191

<sup>9</sup> State of Uttar Pradesh vs. Naresh and Ors. AIR 1981 SC 1385

<sup>10</sup> Bharatiya Nagarika Suraksha Sanhita, S. 525, No. 46, Acts of Parliament, 2023.

<sup>11</sup> INDIA CONST., Art 50.

<sup>12</sup> Bharatiya Nagarika Suraksha Sanhita, S. 47, No. 46, Acts of Parliament, 2023.

<sup>13</sup> Pranab Chatterjee vs. State of Bihar (1970) 3 SCC 926.

<sup>14</sup> Bharatiya Nagarika Suraksha Sanhita, S. 230, No. 46, Acts of Parliament, 2023.

3. **Prohibition of Double Jeopardy-** This right essentially prohibits the accused from being re-tried for the same offence, irrespective of the fact that he was acquitted or convicted.<sup>15</sup> The accused is also prohibited to be re-tried on the same set of facts.<sup>16</sup>
4. **Right to Speedy Trial-** BNSS clearly provides that the trial of an accused must be undertaken in an expeditious manner,<sup>17</sup> holding true the adage “Justice delayed is justice denied.”
5. **Right to Free Legal Aid-** Section 304 of BNSS provides for the free dispensation of justice to the needy. It has been stated that if an accused is unable to secure a lawyer for himself, the State is obliged to provide him a lawyer at its own expense.<sup>18</sup>
6. **Right of Proceedings to be conducted in the presence of the Accused-** Criminal trials cannot proceed *ex-parte* against the accused persons. Further, the law holds that the accused has the right to produce evidence in defence<sup>19</sup> for evidence to be taken in his presence<sup>20</sup> and to Cross-Examine the witnesses<sup>21</sup>
7. **Right to Bail-** “Right to bail is the rule, while jail is the exception.”<sup>22</sup> As pronounced by Justice Iyer has been enshrined in the Code to ensure accused get to claim bail for bailable offences.<sup>23</sup>

A study of the above explained provisions highlights that numerous rights are indelible to the process of a fair trial. In today’s landscape maintaining the impartiality of judges while ensuring the victim is granted justice is of the utmost importance especially when external factors come into place. An accused cannot be tried by a system that intends to give its judgement without due legal process hence the Right to an Open Trial<sup>24</sup> is crucial to maintain the constitutionality of a trial.

---

<sup>15</sup> Bharatiya Nagarika Suraksha Sanhita, S. 337, No. 46, Acts of Parliament, 2023.

<sup>16</sup> Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao (2011) 2 SCC 703.

<sup>17</sup> Bharatiya Nagarika Suraksha Sanhita, S. 346, No. 46, Acts of Parliament, 2023.

<sup>18</sup> Suk Das v. UT of Arunachal Pradesh (1986) 2 SCC 401.

<sup>19</sup> Bharatiya Nagarika Suraksha Sanhita, S. 269, No. 46, Acts of Parliament, 2023.

<sup>20</sup> Bharatiya Nagarika Suraksha Sanhita, S. 308, No. 46, Acts of Parliament, 2023.

<sup>21</sup> Bharatiya Nagarika Suraksha Sanhita, S. 348, No. 46, Acts of Parliament, 2023.

<sup>22</sup> State of Rajasthan V. Balchand (1977) 4 SCC 308.

<sup>23</sup> Bharatiya Nagarika Suraksha Sanhita, S. 478, No. 46, Acts of Parliament, 2023.

<sup>24</sup> Bharatiya Nagarika Suraksha Sanhita, S. 366, No. 46, Acts of Parliament, 2023.

## Concept of a Media Trial

The concept of an accused being tried for their supposed crimes by the Press is not recent. Popular media having strong influences on the outcome of the legal process goes back to the invention of the printing press. Although the phrase has not been defined formally, it can be understood to mean when publications, in-print or otherwise, drastically affect the reputation of an accused or sensationalise the actual events that occurred in a matter. Media Trials however are intrinsically linked to the Freedom of Speech and Expression, a free press is essential to a true democracy so is an undeterred judicial system. The Apex Court has pronounced that “Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”<sup>25</sup>

“Trial by media has created a “problem” because it involves a tug of war between two conflicting principles – free press and free trial, in both of which the public are vitally interested.”<sup>26</sup> There have been multiple instances wherein media’s perspective on a trial has overemphasised a legal matter to the ends of the Earth.

In the *Indrani Mukherjea* case wherein the accused,<sup>27</sup> Mrs. Mukherjea was on trial for the murder of her daughter Ms. Sheena Bohra was perhaps the most publicised trial of the 2010s. Many newspaper outlets had dedicated sections with everyday so-called updates of the case, including exaggerated imagery of the investigation. The case has not yet reached completion, however the media controversy around it has already pronounced her as the convict.

Furthermore, in the *Jessica Lall Case*,<sup>28</sup> the accused persons were acquitted of all charges by trial court but after a nationwide public outrage against the alleged corrupt decision, the Delhi High Court took up cognizance of the case through a fast-track trial that culminated in the accused’s conviction. Public scrutiny on cases therefore leads to overturning of decisions that may be corrupt.

Thus, it was aptly pronounced by the Court that,

---

<sup>25</sup> *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* (1985) 1 SCC 641 at p. 664, para 32.

<sup>26</sup> Sanya Kapoor, *An Insight into the Constitutionality of Media Trials in India*, 3 JUS CORPUS L.J. 546 (2022).

<sup>27</sup> *Indrani Mukherjea vs. Central Bureau of Investigation Anr.* SLP (crl) No-001627/2022

<sup>28</sup> *Manu Sharma vs. The State (NCT of Delhi)*, Crl. R. 596/200

*“through media publicity those who know about the incident may come forward with information, it prevents perjury by placing witnesses under public gaze and it reduces crime through the public expression of disapproval for crime and last but not the least it promotes the public discussion of important issues. All this is done in the interest of freedom of communication and right of information little realizing that right to a fair trial is equally valuable.”<sup>29</sup>*

## **Comparative Analysis**

The concept of a media trial is not unique to India. Multiple countries have passed legislations and judgements defining their stance on the rising tide of such cases. The Supreme Court of USA held when “The judiciary which becomes caught up in such entertainment, by the public televising of its process, will struggle (sometimes successfully, sometimes not) to maintain the dignity and justice that is the accused’s due. But these are not the media’s concerns. Jurists should be in no doubt that the media’s concerns are entertainment, money-making and, ultimately, the assertion of the media’s power”<sup>30</sup>

The ICCPR, to which India is a signatory, also provides “the Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interests of the private lives of the Parties so requires, or to the extent necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”<sup>31</sup>

The UK has held that media trials do indeed affect the judges. Courts and Tribunals have been specifically established to handle cases of varied backgrounds, and they have the sole expertise to rule on them in consonance with the legal procedure. The media trial is similar to awarding a sentence before issuing a verdict in the first instance. The court affirmed that it is critical to understand that no other authority can usurp the functions of the courts in a civilised society.<sup>32</sup>

## **Criticism of Media’s Influence on a Fair Trial**

Right to a Fair Trial is recognized as the cornerstone of criminal legal justice. Indian legislation

---

<sup>29</sup> Kartongem Kemi Och Forvaltning AB and Ors. vs. State through CBI 2004 (72) DRJ 693

<sup>30</sup> Sheppard v Maxwell 346 F.2d 707 (1965).

<sup>31</sup> Art. 14(1), ICCPR, (1966) 999 UNTS 171.

<sup>32</sup> Attorney General vs. British Broadcasting Corporation (1981) AC 303.

has made several provisions safeguarding the same. An atmosphere of judicial calm has been held as a tenet of fair trial.<sup>33</sup> Therefore, media becoming an extraneous pressure is now held to be acting in contempt of court. The Court thus decided “A journalist may be liable for contempt of Court if he publishes anything which might prejudice a ‘fair trial’ or anything which impairs the impartiality of the Court to decide a cause on its merits, whether the proceedings before the Court be a criminal or civil proceeding.”<sup>34</sup>

In a landmark judgement the Supreme Court has observed, “There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offense he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.”<sup>35</sup>

There also is a report promulgated by the Law Commission of India entitled “**Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971).**” Defined categories of media that are prejudicial and can hamper the course of law. It suggested amendments to the existing Contempt of Courts Act that include defining publication to include print and electronic media as well as to create a just balance between the freedom of speech and expression guaranteed in Art.19(1)(a) and due process of criminal justice required for a fair criminal trial as part of the administration of justice.<sup>36</sup>

## Conclusion

In conclusion, the influence of media trials within the Indian criminal justice system is a pressing concern that demands attention. While media scrutiny can serve as a mechanism for transparency and accountability, its unchecked propagation has negative consequences for the administration of justice. The phenomenon of trial by media not only compromises the fundamental rights of the accused, but also undermines the integrity of judicial proceedings,

---

<sup>33</sup> Anek Singh vs. State of U.P. AIR 2019 ALL 2146.

<sup>34</sup> Rajendra Sail vs. M.P. High Court Bar Association, (2005) 6 SCC 109.

<sup>35</sup> State of Maharashtra vs. Rajendra Jawanmal Gandhi AIR 1997 SC 3986.

<sup>36</sup> “Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure, 200<sup>th</sup> Law Commission Report, (2006)

thereby jeopardizing the very essence of a fair trial.

Firstly, the sensationalization and distortion of facts by media outlets often lead to the vilification and demonization of the accused even before they are proven guilty in a court of law, leading example being the *Indrani Mukherjea* case. This prejudicial portrayal not only ruins public perception but also creates an environment wherein the accused are presumed guilty until proven innocent, thereby subverting the cardinal principle of 'innocent until proven guilty'. Such judgment not only violates the right to a fair trial enshrined in the Constitution of India but also undermines the presumption of innocence, which is a cornerstone of any civilized legal system.

Moreover, the relentless media coverage of high-profile cases tends to turn crime into melodramas, thereby trivializing the gravity of the offense and reducing complex legal issues to entertainment for the masses. The proliferation of 24-hour news cycles and social media platforms have worsened this trend, leading to a culture of trial by public opinion wherein justice is meted out not in the courtroom but in the court of public opinion. This not only erodes public confidence in the judiciary but also undermines the principle of judicial impartiality, as judges may feel pressured to deliver verdicts that align with popular sentiment rather than the merits of the case.

### **Suggestions**

In light of these shortcomings, it is of utmost importance that concrete measures be taken to mitigate the impact of media trials on the Indian criminal justice system.

1. Firstly, there is an urgent need for the enactment of legislation to regulate the conduct of media trials and ensure that they adhere to the principles of fairness, accuracy, and impartiality. Such legislation should establish clear guidelines for media coverage of criminal proceedings, including restrictions on the publication of prejudicial material that may unduly influence public opinion or jeopardize the rights of the accused.
2. Secondly, there is a need for the judiciary to be proactive in approaching the challenges posed by media trials. Additionally, judges should be empowered to take suo moto cognizance of instances wherein media has intervened in the judicial proceedings.
3. Thirdly, there is a need for greater public awareness and education about the dangers of



media trials and the importance of preserving the integrity of the criminal justice system. This may entail the conduct of public awareness campaigns and educational programs to educate the public about their rights and responsibilities in relation to media coverage of criminal proceedings.

## **Bibliography**

### ***Articles***

1. Tiwari, N. (2010) 'Fair trial vis-à-vis criminal justice administration: A critical study of Indian criminal justice system', *Journal of Law and Conflict Resolution*, 2, pp. 66–73.
2. Sanya Kapoor, An Insight into the Constitutionality of Media Trials in India, 3 JUS CORPUS L.J. 546 (2022).
3. Apoorva Singh, 'A Study on the Influence of Trial by Media on the Administration of Justice & Rights of the Accused' (*NUALS*, 2021)
4. Saif Hussain, Social Media Trials in India: A Comprehensive Analysis of Legal Implications and Societal Impact, 3 INDIAN J. INTEGRATED RSCH. L. 1 (2023).

### ***Books***

1. K.N.C. Pillai (ed.), R.V. Kelkar's Criminal Procedure, pg. 336 (5th edn.)
2. Ratanlal and Dhirajlal, The Code of Criminal Procedure, (20<sup>th</sup> Edn.)

### ***Statutes***

1. Bharatiya Nagarika Suraksha Sanhita.
2. The Constitution of India
3. International Covenant on Civil and Political Rights