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# **MEDIA FREEDOM VS MEDIA TRIAL: A CONSTITUTIONAL STUDY OF FREE SPEECH AND REGULATORY CONTROLS IN INDIA**

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## **ABSTRACT**

The media occupies a pivotal position in a constitutional democracy. In India, the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution forms the bedrock of press freedom and ensures an informed citizenry, transparency, and accountability in governance. At the same time, the rise of sensationalism, competitive journalism, and 24×7 news cycles has given birth to the phenomenon of "media trials," wherein media platforms assume the role of investigators, prosecutors, and judges, often prejudging guilt and influencing public opinion as well as judicial processes. This research paper undertakes a constitutional study of the tension between media freedom and media trial in India. It examines the constitutional foundations of press freedom, the limits imposed under Article 19(2), and the regulatory framework governing print, broadcast, and digital media. The paper critically analyses landmark judicial pronouncements, statutory provisions, and contemporary challenges, particularly in the digital era. It argues for a balanced regulatory model that protects freedom of expression while preventing the abuse of media power that undermines the right to fair trial, privacy, and dignity. The study concludes by proposing reforms to ensure ethical journalism, judicial restraint, and institutional accountability, thereby harmonising free speech with constitutional values.

**Keywords:** Media Freedom, Media Trial, Freedom of Speech, Article 19, Fair Trial, Constitutional Law, Media Regulation, India.

## **Chapter 1: Introduction To Freedom Of Press And Media Trial**

### **Introduction**

The media is often regarded as the fourth pillar of democracy, alongside the legislature, executive, and judiciary. In a democratic society, the media plays a crucial role in disseminating information, shaping public opinion, and acting as a watchdog over state institutions. The Indian Constitution guarantees freedom of speech and expression under Article 19(1)(a), which has been judicially interpreted to include freedom of the press. This constitutional protection ensures that the media can function independently, fearlessly, and responsibly in public interest.

However, in recent decades, the phenomenon of "media trials" has emerged as a serious concern. Media trials refer to the practice of the media conducting parallel investigations, publishing speculative narratives, and delivering verdicts on matters that are sub judice. This trend is particularly evident in high-profile criminal cases, where relentless media coverage often prejudices public perception and potentially influences judicial outcomes. Sensational headlines, selective leaks, and emotional narratives have transformed news reporting into a form of entertainment-driven justice, raising grave constitutional and ethical issues.

The tension between media freedom and fair trial is not merely a theoretical concern but has practical implications for the administration of justice, individual rights, and democratic governance. While freedom of expression is a cherished constitutional value, it is not absolute. Article 19(2) permits reasonable restrictions in the interests of, inter alia, contempt of court, defamation, and public order. Media trials frequently trespass into these restricted domains, thereby necessitating regulatory and judicial intervention.

This paper seeks to examine the constitutional dimensions of media freedom vis-à-vis media trials in India. It analyses the legal framework governing media, explores judicial responses to media excesses, and evaluates the adequacy of existing regulatory mechanisms. By adopting a doctrinal and analytical approach, the study aims to propose a balanced framework that upholds press freedom while safeguarding the rights of individuals and the integrity of the justice system.

### **Research Objective**

1. To what extent does Article 19(1)(a) of the Indian Constitution guarantee freedom of speech and expression in safeguarding media rights, and how are these rights

balanced with reasonable restrictions

2. To identify and analyze the major statutory and regulatory frameworks governing print, broadcast, and digital media in India.
3. To critically assess the role and effectiveness of regulatory bodies such as the Press Council of India, NBDA, and BCCC in maintaining media accountability without infringing on constitutional freedoms.
4. To study judicial interpretations and key case laws that have shaped the relationship
5. To critically examine the impact of media trials on the judicial process in India, with a focus on how pre-trial media coverage influences public opinion, judicial impartiality, and the right to a fair trial under Article 21 of the Constitution.

## **Research Questions**

1. To what extent does Article 19(1)(a) of the Indian Constitution safeguard media freedom, and how are reasonable restrictions under Article 19(2) applied to balance press rights with individual rights such as fair trial and privacy?
2. How have Indian courts shaped the jurisprudence on media freedom and media trial through landmark judgments, and what does this reveal about the evolving constitutional balance between free speech and judicial fairness?
3. What regulatory mechanisms currently exist in India to ensure media accountability (Press Council, NBDSA, IT Rules), and what gaps remain in addressing challenges posed by digital and social media platforms?
4. Is there a need for an independent Media Ombudsman in India, and how can comparative models from other jurisdictions inform the development of such an institution to safeguard both press freedom and individual rights?

## **Chapter 2: Constitutional Framework of Media Freedom in India**

### **Article 19(1)(a) and Freedom of the Press**

Article 19(1)(a) of the Indian Constitution guarantees to all citizens the right to freedom of

speech and expression. Although the Constitution does not explicitly mention freedom of the press, the Supreme Court has consistently held that this freedom is an integral part of Article 19(1)(a). In *Romesh Thappar v. State of Madras* (1950)<sup>1</sup>, the Court observed that freedom of speech and expression includes freedom of propagation of ideas, which is ensured through the press. Similarly, in *Indian Express Newspapers v. Union of India* (1985)<sup>2</sup>, the Court emphasised that press freedom is essential for democratic functioning.

The rationale for protecting press freedom lies in its role in promoting informed public discourse, facilitating political participation, and ensuring governmental accountability. A free press acts as a marketplace of ideas, enabling diverse viewpoints to coexist and fostering democratic deliberation.<sup>3</sup>

### **Reasonable Restrictions under Article 19(2)**

The freedom guaranteed under Article 19(1)(a) is subject to reasonable restrictions enumerated under Article 19(2), which include sovereignty and integrity of India, security of the state, public order, decency or morality, contempt of court, defamation, and incitement to an offence. These restrictions represent a constitutional balance between individual liberty and societal interests.

In the context of media trials, the most relevant grounds are contempt of court, defamation, and public order. Excessive and prejudicial media reporting can interfere with the administration of justice, thereby amounting to contempt. Similarly, unverified allegations can harm an individual's reputation, violating the right to dignity under Article 21.<sup>4</sup>

### **Right to Fair Trial under Article 21**

Article 21 of the Constitution guarantees the right to life and personal liberty, which has been expansively interpreted to include the right to a fair trial. In *Maneka Gandhi v. Union of India* (1978)<sup>5</sup>, the Supreme Court held that any procedure depriving a person of life or liberty must be fair, just, and reasonable. Media trials, by creating a hostile public environment, risk

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<sup>1</sup> *Romesh Thappar v. State of Madras*, A.I.R. 1950 S.C. 124.

<sup>2</sup> *Indian Express Newspapers v. Union of India*, (1985) 1 S.C.C. 641.

<sup>3</sup> Prashant Reddy, Trial by Media and Criminal Justice, 4 NUJS L. Rev. 235, 240–46 (2011).

<sup>4</sup> P.K. Tripathi, Constitutional Guarantees and Freedom of Press, 17 J. Indian L. Inst. 233, 237–40 (1975).

<sup>5</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

undermining the presumption of innocence and influencing judicial decision-making, thereby infringing the right to a fair trial.

### **Chapter 3: Concept and Evolution of Media Trial in India**

#### **Meaning and Characteristics**

Media trial refers to the process by which the media assumes the role of adjudicating guilt or innocence before a court of law delivers its verdict. It is characterised by sensational reporting, speculative analysis, emotional storytelling, and selective disclosure of facts. This phenomenon is driven by commercial pressures, competition for viewership, and the 24×7 news cycle.

#### **Historical Evolution**

While media activism in India has historically played a constructive role in exposing corruption and social injustices, the transformation of news into entertainment has altered journalistic priorities. The advent of satellite television, digital platforms, and social media has amplified the reach and impact of media narratives, making media trials more pervasive and influential. High-profile cases such as the Jessica Lal murder case, the Aarushi Talwar case, and the Sushant Singh Rajput death case exemplify the dangers of media trials. In these cases, relentless media scrutiny, speculative reporting, and public campaigns created immense pressure on investigative agencies and courts, often leading to distorted public perceptions.<sup>6</sup>

#### **Media Trial vs Fair Trial: Constitutional Tensions in India**

Media trial refers to the practice of media houses conducting parallel investigations, making speculative allegations, and publicly declaring the guilt or innocence of accused persons even before the conclusion of judicial proceedings.<sup>7</sup> With the emergence of 24×7 news channels, social media platforms, and sensationalist journalism, news reporting has increasingly crossed the line from factual dissemination into opinionated adjudication. High-profile criminal cases are often transformed into public spectacles, where leaked evidence, anonymous sources, and conjectural narratives dominate news cycles. This tendency not only prejudices public perception but also risks undermining the integrity of the criminal justice process by

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<sup>6</sup> Gautam Bhatia, *Offend, Shock or Disturb: Free Speech under the Indian Constitution* 87–94 (2016).

<sup>7</sup> Madhavi Goradia Divan, *Media Trial: Freedom of Expression vs. Fair Trial*, 45 Econ. & Pol. Wkly. 25, 26–29 (2010).

influencing witnesses, investigators, and sometimes even judicial authorities.<sup>8</sup>

### **Fair Trial as a Constitutional Guarantee**

Although the Constitution does not explicitly define the right to a fair trial, the Supreme Court has consistently held that it forms an inseparable component of Article 21. In *Maneka Gandhi v. Union of India* (1978), the Court expanded the scope of Article 21 by holding that any procedure established by law must be fair, just, and reasonable, thereby incorporating substantive due process into Indian constitutional jurisprudence. This interpretation laid the foundation for recognizing procedural fairness as an essential element of personal liberty. In *Zahira Habibullah Sheikh v. State of Gujarat* (2004)<sup>9</sup>, popularly known as the Best Bakery case, the Supreme Court emphasized that a fair trial is the heart of criminal jurisprudence and includes fairness not only to the accused but also to the victim and society at large. The Court highlighted that any external interference that distorts the course of justice amounts to a violation of constitutional guarantees.<sup>10</sup>

The right to fair trial encompasses several essential principles, including the presumption of innocence until proven guilty, impartial adjudication by an independent judiciary, protection against public prejudice, and adherence to due process. When media trials intrude into this domain, they risk eroding these foundational safeguards and converting judicial proceedings into public spectacles driven by popular sentiment rather than legal reasoning.<sup>11</sup>

### **Judicial Approach to Media Trial**

*K.M. Nanavati v. State of Maharashtra* (1961<sup>12</sup>). Commander K.M. Nanavati, a naval officer, was tried for the murder of his wife's lover, Prem Ahuja. The case attracted unprecedented media coverage, public sympathy, and political attention. Newspapers and radio continuously reported the developments, often portraying Nanavati as a wronged husband rather than an accused. The jury trial resulted in acquittal, allegedly influenced by public sentiment shaped through intense media publicity. However, the Bombay High Court reversed the jury verdict, and the matter ultimately reached the Supreme Court. The Supreme Court upheld Nanavati's

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<sup>8</sup> Alok Prasanna Kumar, Media Trial and the Right to Fair Trial, 22 Nat'l L. Sch. India Rev. 123, 130–34 (2010).

<sup>9</sup> *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 S.C.C. 158 (India).

<sup>10</sup> Justice B.N. Srikrishna, *Privacy and Freedom of Press*, 8 J. Nat'l L. Sch. India 1, 4–9 (2016).

<sup>11</sup> Alok Prasanna Kumar, Media Trial and the Right to Fair Trial, 22 Nat'l L. Sch. India Rev. 123, 130–34 (2010).

<sup>12</sup> *K.M. Nanavati v. State of Maharashtra*, A.I.R. 1962 S.C. 605 (India).

conviction under Section 302 IPC, setting aside the jury verdict. The Court emphasized that legal adjudication must be based strictly on evidence and legal principles, not emotional public opinion. Although the Court did not directly restrict media reporting, this case demonstrated for the first time how **excessive** publicity could prejudice judicial outcomes. It exposed the dangers of jury susceptibility to public opinion shaped by media trials, ultimately contributing to the abolition of jury trials in India. The case remains a foundational example of how unregulated press coverage can distort the administration of justice, necessitating judicial caution.

*Jessica Lal Murder Case – Manu Sharma v. State (NCT of Delhi) (2010)*<sup>13</sup> Jessica Lal, a model, was shot dead in a crowded restaurant in Delhi. The prime accused, Manu Sharma, was initially acquitted due to hostile witnesses and lack of evidence. This triggered massive public outrage, amplified through sustained media campaigns exposing investigative lapses and prosecutorial failures. Following intense media scrutiny, the Delhi High Court reopened the matter, convicted Manu Sharma, and sentenced him to life imprisonment, which was later upheld by the Supreme Court. The Supreme Court upheld the conviction and acknowledged the constructive role played by the media in exposing institutional failures. However, it cautioned against sensationalism and emphasized that media should not substitute judicial processes. This case demonstrates the positive dimension of media activism, where public interest journalism contributed to accountability and justice. At the same time, the Court clarified that media intervention must not cross into prejudicial adjudication, thereby reinforcing that press freedom must operate within constitutional limits to preserve judicial independence.

*Aarushi Talwar Murder Case (2008)*<sup>14</sup> The murder of teenage Aarushi Talwar and her domestic help Hemraj generated intense media speculation. Television channels constructed narratives accusing the parents, Rajesh and Nupur Talwar, of the crime, often based on conjecture rather than evidence. Sensational headlines, leaked investigation theories, and character assassination created irreversible reputational harm even before trial commenced. While acquitting the parents, the Allahabad High Court strongly criticized the irresponsible and sensational nature of media reporting, observing that the media had virtually conducted a parallel trial, seriously undermining the right to dignity and fair trial under Article 21. The Court reaffirmed that freedom of the press does not extend to prejudicial speculation in sub judice matters. The case stands as a cautionary example of how media trials can destroy reputations and compromise

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<sup>13</sup> State of NCT of Delhi v. Manu Sharma, (2010) 6 S.C.C. 1 (India).

<sup>14</sup> Talwar v. Cent. Bureau of Investigation, (2018) 7 S.C.C. 1 (India).

judicial fairness, highlighting the necessity of ethical journalism and regulatory restraint.

*Sushant Singh Rajput Death Case (2020)* Following the death of actor Sushant Singh Rajput, media outlets flooded television and social media platforms with conspiracy theories, speculative narratives, and unverified allegations. Competing narratives regarding murder, abetment, financial exploitation, and political conspiracy dominated public discourse, often overshadowing official investigations. The Supreme Court, while transferring the investigation to the Central Bureau of Investigation, warned against the dangers of parallel media trials, emphasizing that excessive reporting interferes with investigative neutrality and judicial fairness. This case underscores the threat posed by sensational digital media to criminal justice processes. The Court stressed that public curiosity cannot override constitutional protections of fairness, dignity, and due process, reaffirming judicial authority as the sole adjudicator of guilt.

*Sahara India Real Estate Corp. Ltd. v. SEBI (2012)* Sahara India contended that excessive and prejudicial media reporting during pending proceedings violated its right to fair trial. It argued that continuous publicity influenced public perception and potentially judicial reasoning. The Supreme Court introduced the doctrine of postponement orders, allowing courts to temporarily restrain media reporting where publication would cause real and substantial prejudice to judicial proceedings. The Court clarified that such restrictions must be necessary, proportionate, and time-bound. This case established the constitutional balancing framework between Article 19(1)(a) and Article 21. It recognized press freedom as a democratic necessity but held that judicial fairness must prevail where there is real danger of prejudice, thereby crafting a proportionate regulatory tool.

*R.K. Anand v. Registrar, Delhi High Court (2009)* A television sting operation exposed attempts to influence witnesses in a high-profile criminal case. While the exposure highlighted corruption, the manner of broadcast compromised judicial dignity and trial fairness. The Supreme Court punished the guilty lawyers for contempt but criticized the media for sensationalizing the trial process. It cautioned that media interventions should not derail judicial proceedings. The Court recognized the investigative role of journalism, but stressed that media must not assume judicial authority. This case reinforced that journalistic freedom must be exercised with constitutional responsibility.



*Romesh Thappar v. State of Madras (1950)*<sup>15</sup> The Madras government banned circulation of a political journal, Cross Roads, citing public safety. The editor challenged the ban as unconstitutional. The Supreme Court struck down the ban, holding that freedom of press is part of Article 19(1)(a) and that restrictions must strictly fall within Article 19(2). Though unrelated to media trials, this case laid the constitutional foundation of press freedom, which later courts balanced against fair trial concerns.

*Brij Bhushan v. State of Delhi (1950)*<sup>16</sup> The government imposed pre-censorship on a newspaper, requiring prior approval before publication. The Supreme Court invalidated the censorship order, holding that prior restraint violates press freedom. This case reinforced press autonomy, later limited in sub judice matters to preserve judicial fairness.

*Kedar Nath Singh v. State of Bihar (1962)*<sup>17</sup> The petitioner challenged the constitutionality of sedition law after conviction for political speech. The Supreme Court upheld Section 124A IPC but restricted its application to incitement to violence. The ruling protected press criticism and political dissent, indirectly enabling investigative journalism, while preserving public order. Indian jurisprudence has developed a harmonious construction doctrine, whereby Article 19(1)(a) and Article 21 are balanced through proportional restrictions, contempt jurisdiction, postponement orders, and judicial oversight. While media activism has strengthened accountability, unchecked sensationalism has necessitated constitutional restraint to preserve judicial impartiality and dignity.

### **Contempt of Court and Media Regulation**

The Contempt of Courts Act, 1971, provides statutory safeguards against publications that obstruct or interfere with the administration of justice. Section 2(c) defines criminal contempt to include any act or publication that prejudices or interferes with judicial proceedings. In *In Re: P.C. Sen (1969)*, the Supreme Court held that public commentary on pending cases, which tends to influence the outcome of judicial decisions, constitutes contempt of court. Similarly, in multiple subsequent decisions, the judiciary has reiterated that media trials, by creating preconceived notions of guilt or innocence, obstruct the free and fair functioning of courts.

Despite these legal safeguards, enforcement remains inconsistent, particularly in the digital

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<sup>15</sup> *Romesh Thappar v. State of Madras*, A.I.R. 1950 S.C. 124.

<sup>16</sup> *Brij Bhushan v. State of Delhi*, A.I.R. 1950 S.C. 129.

<sup>17</sup> *Kedar Nath Singh v. State of Bihar*, A.I.R. 1962 S.C. 955.

age, where social media platforms disseminate information at unprecedented speed. Regulatory bodies such as the Press Council of India and the News Broadcasting and Digital Standards Authority issue ethical guidelines, but their powers are largely recommendatory, lacking effective enforcement mechanisms.<sup>18</sup>

### **High-Profile Cases and Media Excess**

The impact of media trials is most evident in high-profile criminal cases. In the Jessica Lal murder case, extensive media coverage and public activism exposed flaws in the initial investigation and prosecution, ultimately contributing to a successful appeal. However, in the Aarushi Talwar murder case, sensational reporting resulted in widespread character assassination and public vilification, even though the accused parents were eventually acquitted. Similarly, in the Sushant Singh Rajput death case, relentless media speculation transformed an ongoing investigation into a spectacle, leading to multiple unverified theories, public hysteria, and reputational harm to several individuals. These cases demonstrate that while media intervention can sometimes promote accountability, unchecked sensationalism often undermines the fundamental principles of fairness, dignity, and due process.<sup>19</sup>

### **Ethical and Constitutional Implications**

Media trials raise profound ethical and constitutional concerns, particularly regarding the presumption of innocence and the right to reputation, which has been recognized as a component of Article 21. Prejudicial reporting not only damages the dignity of accused persons but also exerts indirect pressure on investigators, prosecutors, and judges. The resulting trial atmosphere risks being shaped by public sentiment rather than legal evidence, thereby compromising the impartiality of judicial outcomes. In this context, media trials represent a form of parallel adjudication that threatens the very foundations of constitutional governance and the rule of law.<sup>20</sup>

### **Balancing Constitutional Values**

The judiciary has consistently advocated a doctrine of balancing to reconcile media freedom

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<sup>18</sup> Anup Surendranath & Abhinav Sekhri, Free Speech, Sedition & Criminal Law Reform, 49 Econ. & Pol. Wkly. 43, 47–51 (2014).

<sup>19</sup> Vrinda Bhandari & Aishwarya Singh, Regulating Digital News Platforms in India, 11 NUJS L. Rev. 89, 95–102 (2018).

<sup>20</sup> Law Commission of India, 200th Report on Trial by Media: Free Speech vs Fair Trial under Criminal Procedure Code 1–28 (2006).

with fair trial rights. This approach involves permitting robust public discourse while imposing proportionate restrictions where necessary to protect judicial integrity. Reasonable restrictions under Article 19(2), judicially crafted postponement orders, and strict application of contempt laws constitute essential tools in this balancing exercise. However, long-term solutions also require ethical self-regulation by media organizations, enhanced professional training in legal reporting, and public awareness regarding the consequences of prejudicial publicity. In *Subramanian Swamy v. Union of India* (2016)<sup>21</sup>, the Court upheld the constitutionality of criminal defamation, recognising the right to reputation as an intrinsic part of Article 21. This judgment has significant implications for media reporting, reinforcing the duty to exercise restraint and responsibility.

#### **Chapter 4: Media regulatory and Statutory Framework in India.**

Indian media regulatory architecture is a mishmash of statutory regulators and self-regulatory systems that in most instances introduce accountability lapses particularly in matters touching on media trials. The PCI which was founded in the Press Council of India Act, 1978, controls the print media only and is mostly criticised by its deficiency in punitive measures, only having the authority to censure or warn. Broadcast media subordinates have the NBDSA and NBA working under a self-regulatory system and follow a Code of Ethics. The NBDSA can impose a fine up to 1 lakh rupees, but only the member channels are subject to this. The Contempt of Courts Act, 1971, was the main instrument of preventing prejudice in the judiciary, and this was invoked in cases like *RK. Anand v. Registrar, Delhi High Court* (2009)<sup>22</sup> where interference with the judicial process was penalised, and under which the Supreme Court in *Sahara India Real Estate v. SEBI* 2012<sup>23</sup> explicitly defined the ability to issue postponement orders in order to delay reporting.

The entry of digital media has even complicated the regulatory environment. The newly framed Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021<sup>24</sup>, also commonly referred to as the IT Rules, 2021, envisaged a multi-layered control design of digital news and OTT content that has already been questioned in the courts due to the connotations of the impact of governmental control and potential censorship. This non-

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<sup>21</sup> *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).

<sup>22</sup> *R.K. Anand v. Registrar, Delhi High Court*, (2009) 8 S.C.C. 106

<sup>23</sup> *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 S.C.C. 603.

<sup>24</sup> News Broadcasters & Digit. Ass'n, Code of Ethics & Broadcasting Standards (2021) (India).

uniformity of standards and enforcement is a significant blank in the whole range as digital and social media platforms, which contribute significantly to the media trial, do not fall under the effective jurisdiction of the PCI and NBDISA, allowing the unverified contents and allegations of fake news to spread virally. The statutory provisions are rigid to address 24/7 rolling news and instantaneous digital virality, which places a gaping hole in the statutory provisions of media accountability and leaves it largely voluntary and lacking in the necessary deterrent to ensure that the Right to a Fair Trial in Article 21 is not depleted.

### **Press Council of India Act, 1978**

The Press Council of India (PCI) was established as an independent, quasi judicial institution specifically to promote the freedom of the press and the professionalism of journalism and news reporters. Although it can reprimand newspapers, it can reprimand agencies or journalists on professional misconduct, but these are only recommended. In the case of *R. Rajagopal v. state of Tamil Nadu, (1994)*<sup>25</sup> the Court acknowledged that the right to publish the stories about life is subject to privacy and defamation laws, but the PCI and other agencies did not have a strong tool of deterrence and this restricts its deterrent power to a great extent.<sup>26</sup>

### **Cable Television Networks Regulation Act, 1995.**

Cable Television Networks Regulation Act 1995- this is an act that allows the government to control what is aired on cable TV networks. The Cable Television Network Rules rule 6 forbids shows that inappropriately consider moral standards and civility; shows that promulgate brutality; and shows that favor one party in a court or tribunal of law. In *Sudhir Chaudhary v. Union of India (2021, Delhi HC*<sup>27</sup>), In the case the court reiterated that the broadcasters have to act in accordance with the codes of conduct in any case more so when they encompass sensitive issues relating to communal harmony. As a rule, cable television has a tendency of spotting programs that it monitors, administering them sporadically, and blatantly politicizing the whole monitoring in a manner that undermined objectivity.

### **Online Platforms and Information Technology Act, 2000.**

Regulation of online media, OTT platforms and social media intermediaries is in the form of

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<sup>25</sup> *R. Rajagopal v. State of T.N., (1994) 6 S.C.C. 632.*

<sup>26</sup> Press Council of India, *Norms of Journalistic Conduct* (2010).

<sup>27</sup> *Sudhir Chaudhary v. Union of India, 2021 SCC OnLine Del 3400 (India).*

the IT Act and later Intermediary Guidelines and Digital Media Ethics Code Rules, 2021. The regulations demand redressal officers of grievances, control mechanisms, and codes of conduct. In, *LiveLaw Media v., Union of India, (2021, Kerala HC)* the court blocked the coercive action of the Rules of the year 2021 and warned that excessive control of digital media would endanger press freedom. The clash between regulation and free expression on the Internet is a hot debate that is still in progression in constitutional law.

### **Self-Regulation Code of Conducts.**

Several organizations have established among other things the self-regulation codes such as the News Broadcasters and Digital Association (NBDA), and the Broadcasting content complaints council (BCCC), all of which have codes of conduct concerning the content of the programming of their member broadcasters. The problem with self-regulation codes is that they are optional and since they lack any statutory action against them, they cannot discourage influential or multinational media firms to engage in unethical business conduct. An example is the *Republic TV TRP Scam Case (2020)* that investigated the issue of ethics in television journalism, in which the self-regulation-related process did not support the ethics and the necessity to avoid sensationalism in the market.

### **Social Media Complexities.**

The spread of the digital platforms has increased the magnitude of media trials. The viral hashtags as trending videos and unverifiable news develop alternative narratives that do not fall under the jurisdiction of the regulatory agency. As in *Rhea Chakraborty / Sushant Singh Rajput Case (2020)*<sup>28</sup>, the media was always warned by the courts about prejudicial reporting, but there is no independent grievance redress system to make them responsible. The Indian regulation has been described as being disjointed, weak enforcement and incapable of addressing the issue of digital media. The disconnect between the constitutional principles and the real world has a response in the urgency to find a more powerful independent and authoritative regulator.

### **Judicial Trends on Media Freedom, Regulation and Media Trial (2023-2025).**

In the last three years, the story of media freedom in India has changed tremendously, with

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<sup>28</sup> *Rhea Chakraborty v. State of Bihar, (2020) 20 S.C.C. 1 (India).*

courts holding their toes in Article 19(1) free speech, Article 19(2) restrictions and Article 21 of fair-trial safeguards against national-security, disinformation, and hate-speech concerns. Press Freedom and Sealed Covers--The Supreme Court in *MediaOne* (2023)<sup>29</sup> overturned a ban to broadcast, rejecting inaccurate imprecise "sealed cover" claims of national security. The Court required openness, reasonable alternatives and due process.

Misinformation & Fact-Check Unit (FCU) The Bombay High Court (2024) voided provisions of the IT Rules, 2023 that enabled a government FCU on the grounds of vagueness, overbreadth, and chilling effect on journalism (*Kunal Kamra v. Union*)<sup>30</sup>. The Supreme Court put the FCU on suspension highlighting its dangers during the run-off to elections.

Hate Speech and TV Debates The SC (2023) warned that TV debates contributed to the creation of hate speech and suggested potential suspensions of anchors and reiterated suo motu FIRs. The Court emphasized the role of the Election Commission to adopt the Model Code of Conduct and the 48-hour silence norm in 2024 electoral cycle. A new electoral integrity and free speech threat was indicated as AIs deepfakes.

Criminal Process & Chilling Effect (2025) - The FIRs were filed against journalists (Abhisar Sharma) and satirists (Hemant Malviya) based on their criticism of the government officials, and this was a sign of political intolerance. However, the case law trends of the Supreme Court support an expressive freedom orientation, limiting the abuse of penal law, and the chilling effects at the expense of institutional duty to limit hate speech, disinformation and threats to unbiased proceedings in the internet age. Generally speaking, court trends signal a free speech-oriented approach, wherein penal law is confined but the chilling impact is limited, and the institutional responsibility is as well a limitation on the hate speech, disinformation and threat to an unbiased proceeding in the internet age.

## **Chapter 5: A Comparative Analysis of Media Regulation in India, the United States, and the United Kingdom in Balancing Free Speech and Media Trial**

### **Constitutional and Legal Framework in India**

In India, freedom of speech and expression, including freedom of the press, is guaranteed under

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<sup>29</sup> *MediaOne TV v. Union of India*, (2023) SCC OnLine SC 386.

<sup>30</sup> *Kunal Kamra v. Union of India*, 2024 SCC OnLine Bom 421.

Article 19(1)(a) of the Constitution, subject to reasonable restrictions enumerated in Article 19(2). These restrictions include contempt of court, defamation, public order, decency, morality, and the sovereignty and integrity of India. The right to a fair trial is implicitly guaranteed under Article 21, which protects life and personal liberty and has been judicially interpreted to include procedural fairness, due process, and presumption of innocence. The Indian constitutional framework thus explicitly recognizes the possibility of restricting media freedom in order to safeguard the administration of justice.

Judicial interpretation has played a central role in shaping India's regulatory response to media trials. In *Maneka Gandhi v. Union of India* (1978), the Supreme Court constitutionalized due process, thereby strengthening the right to fair trial. In *State of Maharashtra v. Rajendra Jawanmal Gandhi* (1997), the Court strongly condemned trial by media, characterizing it as an affront to the rule of law. In *R.K. Anand v. Registrar, Delhi High Court* (2009), the Court acknowledged the positive role of investigative journalism but warned against excessive sensationalism that could derail judicial proceedings. The most significant doctrinal development occurred in *Sahara India Real Estate Corporation v. SEBI* (2012), where the Supreme Court introduced the doctrine of postponement orders, empowering courts to temporarily restrain media publication to prevent prejudice to pending trials. This judgment reflects India's commitment to balancing competing constitutional rights through proportional judicial intervention.

Statutorily, the Contempt of Courts Act, 1971, serves as the principal regulatory mechanism against prejudicial media reporting. Section 2(c) criminalizes publications that interfere with or obstruct the administration of justice. Additionally, regulatory bodies such as the Press Council of India and the News Broadcasting and Digital Standards Authority issue ethical guidelines, although their enforcement powers remain limited. India thus adopts a rights-balancing approach, permitting reasonable restrictions on media freedom in the interest of ensuring fair trial and judicial integrity.

### **Legal Framework in the United States**

The United States adopts one of the most absolutist approaches to free speech protection in the world. The First Amendment to the U.S. Constitution provides that "Congress shall make no law... abridging the freedom of speech, or of the press." This expansive guarantee has been interpreted by American courts to confer near-absolute protection to press freedom, with

minimal tolerance for prior restraints.

In *Near v. Minnesota* (1931)<sup>31</sup>, the U.S. Supreme Court held that prior restraints on publication are presumptively unconstitutional, thereby setting a high threshold for restricting media reporting. This principle was reaffirmed in the Pentagon Papers case, *New York Times Co. v. United States* (1971)<sup>32</sup>, where the Court refused to restrain publication of classified documents, emphasizing that any system of prior restraint bears a heavy presumption against its constitutional validity.

When it comes to balancing free speech and fair trial, the American judiciary adopts procedural safeguards rather than substantive restrictions on the media. In *Sheppard v. Maxwell* (1966)<sup>33</sup>, the Supreme Court acknowledged that excessive media publicity could compromise fair trial rights but emphasized that trial courts should adopt internal protective measures, such as change of venue, jury sequestration, postponement of trials, and strict courtroom controls, rather than restricting media reporting. The Court rejected prior restraints on the press, preferring to insulate the judicial process through procedural mechanisms.

This approach reflects the deep-rooted American commitment to uninhibited, robust, and wide-open debate, even at the risk of prejudicial publicity. Consequently, media trials are largely addressed through jury management rather than press regulation. While this model maximizes press freedom, critics argue that it inadequately protects accused persons from reputational harm and public prejudice, especially in high-profile cases.<sup>34</sup>

### Legal Framework in the United Kingdom

The United Kingdom adopts a significantly more restrictive approach to media reporting of judicial proceedings, prioritizing the integrity of the justice system. Unlike the United States, the UK does not have a codified constitution but relies on statutory law, common law principles, and the European Convention on Human Rights, incorporated through the Human Rights Act, 1998. Article 10 of the European Convention guarantees freedom of expression but permits restrictions in the interest of maintaining the authority and impartiality of the judiciary.

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<sup>31</sup> *Near v. Minnesota*, 283 U.S. 697 (1931).

<sup>32</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

<sup>33</sup> *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

<sup>34</sup> Laurence H. Tribe, *American Constitutional Law* (3d ed. 2000).



The primary regulatory mechanism in the UK is the Contempt of Court Act, 1981<sup>35</sup>, which introduces the strict liability rule. Under this rule, any publication that creates a substantial risk of serious prejudice to active legal proceedings constitutes contempt of court, regardless of intent. This imposes a proactive obligation on media organizations to avoid prejudicial reporting. In *Attorney General v. English* (1983), the House of Lords upheld strict contempt standards, emphasizing that fair trial rights must prevail over unrestricted media freedom.<sup>36</sup>

In addition, the UK judiciary frequently employs reporting restrictions and postponement orders to protect the administration of justice. The regulatory culture is further reinforced by strong self-regulatory mechanisms, including the Independent Press Standards Organisation (IPSO) and Ofcom, which enforce compliance with editorial codes and broadcasting standards. Consequently, the UK model prioritizes trial integrity over absolute press freedom, reflecting a communitarian approach to balancing rights.

### Comparative Evaluation

A comparative analysis reveals that India occupies a middle position between the libertarian model of the United States and the restrictive framework of the United Kingdom. The American model prioritizes freedom of expression almost absolutely, tolerating the risk of media trials and relying primarily on judicial process management to ensure fair trials. While this approach safeguards democratic discourse, it inadequately addresses reputational damage and public prejudice against accused individuals.

The UK model, by contrast, prioritizes the administration of justice and fair trial rights, imposing strict legal obligations on the media to avoid prejudicial reporting. Although this effectively curtails media trials, critics argue that it can unduly suppress public discourse and investigative journalism. The Indian approach attempts to balance these competing concerns through constitutional proportionality. By recognizing both press freedom and fair trial as fundamental rights, Indian jurisprudence seeks to harmonize these values through judicial oversight, reasonable restrictions, and regulatory mechanisms.

However, the effectiveness of the Indian model is undermined by weak enforcement, fragmented regulation, and the challenges posed by digital and social media. Unlike the UK,

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<sup>35</sup> Contempt of Court Act, 1981, c. 49 (U.K.).

<sup>36</sup> Judith Lichtenberg, *Media Ethics and Democratic Ideals*, 27 J. Applied Phil. 300, 305–11 (2010)

India lacks a unified statutory framework for regulating sub judice reporting, while unlike the US, it lacks robust procedural safeguards to neutralize media influence. This results in inconsistent judicial responses and regulatory gaps that allow sensationalism to flourish.

### **Contemporary Challenges and the Digital Media Era**

The digital revolution has intensified the phenomenon of media trials across all three jurisdictions. Social media platforms, citizen journalism, and algorithm-driven news dissemination have blurred the boundaries between professional journalism and public commentary. In India, viral misinformation and speculative reporting pose acute risks to fair trial rights. In the United States, the viral spread of prejudicial narratives complicates jury impartiality, while in the United Kingdom, enforcing contempt laws against digital platforms presents significant practical challenges.<sup>37</sup>

These developments necessitate a rethinking of regulatory strategies that balance technological realities with constitutional values. Transnational cooperation, platform accountability, and judicial innovation are increasingly essential to preserving the integrity of justice systems.

### **Chapter 6: Reformation policies: Conclusion and Suggestions.**

#### **Conclusions**

This paper has found that the underlying constitutional dilemma between Media Freedom (Article 19(1)(a)) and the Right to a Fair Trial (Article 21) is not appropriately taken care in the current Indian legal and regulatory system. There were trailblazer rulings by the judiciary like the case of *Sahara India v. SEBI* (2012) has attempted to create such a division by allowing passing of postponement orders but the air of malaise that is media trial in its entirety prevails and is mostly led by the immediacy of digital and broadcast media. The main lacuna is the instruments of accountability: the statutory authorities such as the Press Council of India (PCI), and the self-regulatory authorities, such as the Non-Broadcasting Directions Authority (NBDSA), have largely become inefficient because of the absence of punitive powers and inconsistent jurisdiction between the print, broadcast, and online media. The argument is emphasized by comparing that of the UK which has built its own built-in framework of judicial restraint through the strong Contempt of Court framework that supports judicial restraint,

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<sup>37</sup> UNESCO, World Trends in Freedom of Expression and Media Development Report 2023 55–68.

which is augmented by an independent and authoritative check. It is then viewed that the most vital reform is the independent, unified and statutory Media Ombudsman of all media sectors in India. This kind of Ombudsman must be endowed with the authority to impose huge fines and other remedial measures that in effect would compel journalism to deliver its democratic role of a watchdog without usurping the role of the judiciary and interfering with the main right of every citizen to be considered innocent till proven guilty. We need a windmill and a water-tube strategy of empowering forces concerning the judicial contempt and coming up with a powerful, consistent regulatory means of control with the aim of ushering in the responsible media freedom.

### Suggestions

1. **An Empowerment of Judicial Instruments by Proportionality:** Courts must devise and adhere to uniform proportional protection, such as delay orders, such as those acknowledged in *Sahara India v. SEBI*. They must be strictly targeted, time-bound and subject to revision in order to protect the right to fair trial without turning into censorship tools. A formal test, that is, requiring the demonstration of impending injury, and futility of the minor remedies, would offer certainty to both the media and the litigants. This would curtail excessive aggression in judicial restraint, but would not obstruct transparent follow-up of proceedings.
2. **Statutory Regulation in the Digital Media:** As much as the print and broadcast media have a few legislative responsibilities, digital and social media are largely unregulated despite their tremendous influence to the perception of the populace. Parliament can consider a legal framework, which describes the nature of prejudicial online reporting, sets the standard of responsible digital journalism and provides speedy redress of grievance. This law must not be used to justify wholesale censorship but must instead provide moderated solutions to disinformation, hate speech and sub judice comment that harm the integrity of the judiciary.
3. **Rejuvenating Self-Regulation Mechanisms:** The existing mechanisms such as Press Council of India or NBDSA are weak with little power, usually offer non-binding advice. These mechanisms should be empowered by statutory backing, greater autonomy and authority to order correction or an apology to enhance accountability. Self-regulation ensures that there is some responsibility that is born internally in the

media industry and not imposed by the state hence editorial freedom is also done, and credible response to complaints by the people.

4. **The establishment of an Independent Media Ombudsman:** India is in urgent need of having an independent media ombudsman to strike a balance between freedom of expression and fair trial. The institution would be able to address the complaints of the citizens, make timely corrections and make balanced orders that will guarantee both journalistic freedom and human rights. An independent ombudsman model that is not dependent on the government and has the power to enforce would reduce the over reliance on contempt proceedings and suppress sensationalized reporting at the expense of legitimate journalism.
5. **Professional Ethics and Citizen Sensitivity:** Lastly, professional ethics and sensitivity to the citizens cannot be substituted under institutions and legislations. The inclusion of media ethics leadership in the journalism curriculum, instilling codes of conduct within the newsrooms and creating media literacy campaigns can help both the citizenry and the journalists to recognize responsible journalism. A sense of responsibility where fairness and accuracy are more than sensationalism would automatically bring press freedom into line with the constitutional concept of fair trial, and would alleviate the interface between the judicial system and the media.