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A DOCTRINAL AND ANALYTICAL STUDY ON TRIAL BY MEDIA IN THE PRE-TRIAL PHASE IN INDIA: EXAMINING THE RIGHT TO FAIR TRIAL AND THE NEED FOR LEGAL REGULATION

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Abstract

This paper undertakes a doctrinal and analytical study of trial by media in the pre-trial phase in India, examining its implications on the constitutional rights of the accused. Through an analysis of judicial precedent and the existing statutory framework, it addresses two research questions: whether pre-trial media reporting, particularly during the period between arrest and cognisance, violates the accused's right to a fair trial and presumption of innocence under Article 21 of the Constitution of India, and whether the existing legal framework, including the Contempt of Courts Act, 1971, adequately regulates such reporting or whether legislative intervention is required to close the arrest-to-cognisance gap. The paper concludes that the existing framework is structurally incapable of protecting accused persons during the most constitutionally vulnerable phase of criminal proceedings, and proposes a three-tiered legislative framework as the constitutionally mandated and practically adequate response.

Keywords: Trial by Media, Presumption of Innocence, Contempt of Courts Act 1971, Right to Fair Trial

Introduction

In the summer of 2020, the death of actor Sushant Singh Rajput produced an episode of media saturation that had few precedents in the country's post-independence history. For weeks, prime-time television shows operated as de facto tribunals, conducting what they described as their own "investigations," presenting "evidence," naming suspects, and arriving at verdicts, all without a courtroom, a judge, or the rules of procedure that define the administration of justice. Rhea Chakraborty, who became the central figure in this media narrative, was subjected to sustained, personalised coverage that left her character, relationships, and history

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comprehensively exposed to public judgment before any court had taken cognisance of any offence against her. When she was eventually arrested, the charge was a drug-related offence bearing no resemblance to the murder narrative that had dominated national television for the preceding two months. The damage, however, was not undone by the disparity between the media's verdict and the legal reality.

This episode was not exceptional. India has a long and uncomfortable history with what scholars and courts alike call "trial by media," the phenomenon by which mass media coverage of a criminal case shapes, and in some instances effectively determines, public perception of the accused's guilt or innocence well before any judicial determination is made. In a country where the media landscape combines an intensely competitive twenty-four-hour news culture with the amplifying force of social media, the conditions for this phenomenon are not merely present but structural.

The legal response to trial by media has been uneven and, in its most important dimension, absent. The principal legislative instrument available to courts, the Contempt of Courts Act, 1971, treats a criminal proceeding as pending, and therefore susceptible to contempt liability, only from the point at which a charge sheet is filed or summons issued. Everything that happens between arrest and that moment, the period of most intense and most unchecked media coverage, falls outside the Act's protection. A person arrested in a high-profile criminal case may spend weeks, months, or, in some instances, years subject to media coverage that makes findings of guilt, reveals private information, and influences every participant in the eventual proceedings, without any legal mechanism to prevent or remedy it. The Law Commission of India recognised this problem in its two-hundredth report in 2006 and recommended that the definition of "pending" be amended to include the point of arrest.[1] That recommendation has remained unimplemented.

This paper argues that the pre-trial phase of media coverage constitutes a systemic violation of two distinct but related constitutional rights: the right to a fair trial and the presumption of innocence, both of which are guaranteed under Article 21 of the Constitution. This argument rests on the foundational constitutional position established by the Supreme Court in Sahara India Real Estate Corporation Ltd. v. Securities and Exchange Board of India,[2] in which a Constitution Bench held that the presumption of innocence is embedded in Part III of the Constitution, not merely as an aspect of the rule of law but as a substantive Article 21 right. When media coverage establishes guilt in the public mind before any court has examined any evidence, it does not commit a journalistic failure alone. It commits a constitutional one.

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The paper is organised as follows. Part I examines the nature and mechanics of media trials in the pre-trial phase, mapping the specific ways in which public opinion is shaped and constitutional harm inflicted before proceedings commence. Part II develops the constitutional argument, tracing the evolution of Article 21 and demonstrating how pre-trial coverage violates both the presumption of innocence and the right to a fair trial. Part III surveys the existing legal framework and identifies its structural inadequacies. Part IV draws on the United Kingdom's Contempt of Court Act, 1981, as a comparative reference point before proposing a three-tiered legislative framework as the appropriate response. A short conclusion ties the threads together.

I. The Nature and Mechanics of Media Trials in the Pre-Trial Phase

A. Defining the Media Trial

Any serious analysis of trial by media must begin with the question of what a media trial actually is. The term appears in no Indian statute and has resisted a precise legal definition, not because the phenomenon is obscure but because it sits at an uncomfortable boundary between constitutionally protected speech and constitutionally prohibited interference with the administration of justice. The most widely cited judicial formulation comes from the Supreme Court in *R.K. Anand v. Registrar, Delhi High Court*,[3] where the Court described a media trial as "the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law." The definition captures the essential harm: the formation of a verdict in the public sphere that is independent of, and precedes, any judicial finding. Surette describes media trials as events in which "the criminal justice system is co-opted by the media as a source of high drama and entertainment,"[4] a formulation that identifies the commercial and institutional logic that drives the phenomenon. What both definitions share is the recognition that a media trial is not simply biased or irresponsible reporting. It is a parallel proceeding, one conducted without rules of evidence, without the adversarial testing of claims, without the presumption of innocence, and without any right of the accused to present a defence. The accused in a media trial is simultaneously the subject of the proceeding and absent from it: their guilt is established through the accumulative weight of repetition, framing, and narrative construction, while they have no procedural mechanism to contest any of it. This asymmetry is the defining feature of the phenomenon and the source of its constitutional danger.

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B. The Pre-Trial Phase: Why This Window Matters

Within the broader phenomenon of trial by media, the pre-trial phase holds particular constitutional significance. For the purposes of this paper, the pre-trial phase refers to the period from arrest, or, in some cases, from the point at which a person becomes a public suspect, until the formal commencement of judicial proceedings by cognisance. This is, as a matter of observable fact, the period of most intense media coverage: the arrest itself triggers immediate reporting, the early stages of investigation are the period of most active leaking of information to media, and the public's appetite for the narrative is at its highest before the procedural rhythms of formal proceedings slow things down. It is also, as a matter of law, the period of least protection. Under Section 3(2) of the Contempt of Courts Act, 1971,[5] criminal proceedings are treated as "pending" only from the point of charge-framing or the issuance of a summons. Every publication that appears before that moment, however prejudicial and however clearly designed to inflame public opinion against a named individual, is protected from contempt liability as an "innocent publication" under the Act's own terms. The gap between arrest and cognisance is a legal vacuum in which the media may operate without statutory constraint.

This vacuum is not merely a technical inconvenience. In India's criminal justice system, the period between arrest and cognisance can be considerable. During this time, an accused person is particularly vulnerable: they are in custody or on bail, their legal representation is focused on the criminal process rather than the public sphere, and the institutions that might otherwise moderate media conduct have no legal authority to intervene. The media, meanwhile, has every commercial incentive to maximise coverage during precisely this phase, before the story becomes routine and audience interest begins to wane.

C. How Public Opinion is Shaped

The mechanisms by which media trials manufacture public opinion are worth examining in some detail, as understanding them is essential to understanding both the constitutional harm and the appropriate legislative response. The most significant of these mechanisms is the culture of investigative leaking that surrounds police press conferences. Allegations that would never be admissible as evidence in court, including preliminary forensic conclusions, claimed confessions made under uncertain legal circumstances, and anonymous accounts of the accused's character, are routinely disclosed to the media by investigative officials. Once broadcast, these disclosures shape public understanding of the case in ways that cannot

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subsequently be corrected, regardless of what a court later finds. The Supreme Court, recognising this problem, directed in 2013 that the Union Home Ministry develop a Standard Operating Procedure to govern police press conferences in criminal matters.[6] That procedure has been prepared, but its implementation has remained patchy and unenforced.

The Bombay High Court, in Nilesh Navalakha v. Union of India, addressed this dynamic directly in the context of media coverage of the Sushant Singh Rajput investigation.[7] The Court drew a distinction, one that has considerable potential as a legal standard, between information that is "in the public interest" and information that "the public is interested in." There is a genuine and principled difference between journalism that serves a public accountability function and journalism that exploits public fascination with crime and celebrity to maximise viewership. The difficulty is that this distinction, however principled in theory, has no statutory content in India and no enforcement mechanism behind it. Beyond investigative leaks, media trials operate through the structural logic of the twenty-four-hour news cycle itself: guilt narratives are more compelling than factual restraint, and in a competitive media environment where audience attention is the primary currency, the pre-trial phase offers an irresistible combination of high public interest and minimal legal constraint.

D. The Specific Harms of Pre-Trial Media Coverage

The harms inflicted by pre-trial media coverage are constitutionally significant in three distinct ways. The first and most visible is reputational destruction that no subsequent judicial finding can repair. The Ryan International School case,[8] in which a bus conductor was extensively implicated by the media in the sexual assault and murder of a student, only to be exonerated when the actual perpetrator was identified, illustrates the point with particular clarity. By the time the truth emerged, the conductor had suffered personal and professional harm of a magnitude that no acquittal could undo. This pattern of coverage inflicting irreversible harm that the legal system is then powerless to remedy is the paradigmatic injury that this paper seeks to address. It is worth noting that this harm does not depend on a wrongful conviction, or indeed on any conviction at all. The coverage itself inflicts the harm.

The second harm is the contamination of the evidentiary record. The Supreme Court in *State (NCT of Delhi) v. Navjot Sandhu*[9] deprecated the practice of exposing accused persons to public identification through television, observing that prior media exposure could compromise Test Identification Parades and therefore the integrity of the prosecution's case. The contamination extends further: witnesses who have absorbed weeks of media coverage carry that exposure

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into their testimony, and investigating officers who have been publicly praised or criticised for their handling of a case carry those pressures into their investigative choices. The pre-trial media environment does not merely affect the accused; it corrupts the evidentiary ecosystem within which the eventual trial must operate.

The third harm is perhaps the most constitutionally significant: the pressure placed on courts themselves. The presiding judge in the Nirbhaya case, as reported by Justice Kurian Joseph, remarked that had the punishment been lighter, "they would have hung me."[10] This judicial admission, made in the context of a case in which pre-trial media coverage had been extensive and overwhelmingly one-sided, goes to the heart of the constitutional concern. A judge who feels, even unconsciously, that the weight of public opinion constrains their judicial freedom is not sitting in the conditions of judicial calm that the right to a fair trial requires. The constitutional harm of pre-trial media coverage is not hypothetical. It has been acknowledged by the judges who are supposed to be immune to it.

E. Judicial Acknowledgement and Its Limits

Courts have not been silent about trial by media. The Supreme Court in *Anukul Chandra Pradhan v. Union of India*[11] cautioned that no occasion should arise for the impression that media publicity had diluted the emphasis on fair trial principles and the presumption of innocence. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*,[12] the Court characterised media conducting its own "trial" of an accused as undue interference with the administration of justice. These are not isolated observations. They represent a consistent judicial acknowledgement, developed over decades, that trial by media is a real and constitutionally significant phenomenon.[13]

The difficulty is that these observations have remained observations. They have not been translated into enforceable legal standards. They have not generated legislation. They have not produced a consistent body of contempt jurisprudence capable of deterring pre-trial media conduct. The reason for this is structural rather than attitudinal: courts, working within the existing legislative framework, lack the tools to address pre-trial media coverage because that framework excludes the pre-trial phase from the scope of contempt liability. Judicial expression of concern, without legislative backing, cannot be a sufficient response to a structural problem in the law.

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II. The Constitutional Foundation of Fair Trial and Presumption of Innocence Under Article 21

A. Presumption of Innocence in Indian Criminal Jurisprudence

The presumption of innocence is, at its most fundamental level, an allocative principle: it places the burden of proof on the prosecution and shields the accused from the obligation to self-incriminate. But it is more than a procedural rule. It is a statement about the relationship between the individual and the State in the context of criminal proceedings, a recognition that the power to prosecute carries with it the risk of error and the potential for abuse, and that the accused must therefore be treated as innocent not merely formally but in substance until the State has discharged its burden before a competent court. In India, this principle is not explicitly codified in the Constitution, but it is embedded throughout the architecture of criminal law and procedure: in the standard of proof beyond a reasonable doubt, in the right against self-incrimination under Article 20(3),[14] and in the bail jurisprudence that treats liberty as the norm and detention as the exception.

The specific harm inflicted by pre-trial media coverage is the destruction of this presumption in the only forum, public opinion, that the accused cannot access through any legal procedure. A court can protect the accused's procedural rights. It can exclude inadmissible evidence. But it cannot undo the formation of a public verdict that has already taken hold in the minds of millions. Once that verdict is formed, the presumption of innocence exists only on paper.

B. Evolution of Article 21

The constitutional foundation for treating the destruction of the presumption of innocence as a fundamental rights violation was laid, more consequentially than any other development in Indian constitutional law, in *Maneka Gandhi v. Union of India.*[15] Prior to that judgment, Article 21 had been read as a narrow procedural guarantee: the State could not deprive a person of life or personal liberty without the authority of some enacted procedure. *Maneka Gandhi* transformed this guarantee. The Court held that the procedure authorised must itself be fair, just, and reasonable, a shift that transformed Article 21 from a formal procedural guarantee into a substantive right requiring fairness at every stage of the criminal process.

Subsequent decisions elaborated on this foundation. In *Hussainara Khatoon v. State of Bihar*,[16] the Court read the right to a speedy trial into Article 21. In *Zahira Habibullah Sheikh v. State of Gujarat*,[17] it held that a fair trial "obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm" and that it means "a trial in which bias or

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prejudice for or against the accused, the witness, or the cause which is being tried, is eliminated." This formulation, particularly its emphasis on the "atmosphere" of adjudication, is directly relevant to the argument developed in this paper. Pre-trial media coverage does not merely create procedural obstacles to a fair trial. It destroys the atmosphere in which a fair trial can take place.

C. How Pre-Trial Coverage Violates Both Rights

The constitutional violation operates through two pathways, and it is important to be precise about both. The first is the direct destruction of the presumption of innocence. When a television channel broadcasts, as a fact, that a named individual committed a crime, before any court has taken cognisance, before any evidence has been tested, and before the accused has had any opportunity to respond, the presumption of innocence is extinguished in the court of public opinion. This extinguishment is not legally inconsequential. The accused must subsequently navigate a criminal process in a social environment that has already delivered its judgment. The professional, familial, and social consequences of that judgment are suffered immediately and accumulate regardless of the eventual legal outcome. The second pathway is the contamination of the conditions for a fair trial. As the Constitution Bench held in *Sahara India Real Estate Corporation Ltd. v. Securities and Exchange Board of India*,[18] the presumption of innocence is embedded in Part III of the Constitution "not only as part of rule of law under Article 14 but also as an Article 21 right," and Article 19(1)(a) can be restricted through a balancing exercise to protect it from the dangers posed by media trials. The Court's reasoning does not proceed from the proposition that press freedom is unimportant, but from the recognition that it must be weighed against the equally fundamental rights of those who stand accused.

D. Why This Is a Fundamental Rights Violation, Not Just an Ethical Concern

It is worth being explicit about why the harm described in this paper is characterised as a constitutional harm rather than merely an ethical or regulatory failing. The distinction matters because it determines both the nature of the remedy and the obligation it imposes on the State. Ethical concerns are addressed through professional codes, voluntary self-regulation, and social norms. A constitutional harm is one that implicates fundamental rights guaranteed by Part III, rights that the State is obligated to protect, not merely to refrain from violating directly. The Supreme Court has, across a long line of Article 21 decisions, consistently held that the

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right to a fair trial imposes positive obligations on the State: not merely to refrain from procedurally unfair conduct itself, but to create and maintain the institutional conditions in which a fair trial is possible.[19]

Pre-trial media coverage that destroys the presumption of innocence and contaminates the conditions for fair adjudication is not merely ethically objectionable; it violates the right to life under Article 21. The State's failure to enact legislation to prevent this violation, particularly in the face of a Law Commission recommendation that has remained unimplemented for nearly two decades, is a failure to fulfil a constitutional obligation. The argument for legislative reform is, at its core, that the State must do what its Constitution requires.

III. India's Existing Legal Framework and Its Structural Inadequacies

A. The Contempt of Courts Act, 1971: The Arrest-to-Cognisance Gap

The Contempt of Courts Act, 1971, is the primary legislative instrument available to courts seeking to regulate prejudicial media coverage of criminal proceedings. The Act defines criminal contempt to include publications that prejudice or interfere with the due course of any judicial proceeding or the administration of justice.[20] In principle, this definition is broad enough to reach media coverage that prejudices a pending criminal case. The critical limitation, however, lies in the Act's definition of "pending." Under Section 3(2), read with the Explanation appended to that section,[21] criminal proceedings are treated as pending, and therefore susceptible to contempt liability for prejudicial publications, only from the point at which the charge sheet is filed or summons or warrant is issued. Every publication that appears before that moment is expressly sheltered from contempt liability as an "innocent publication." The legal consequence is stark: the period between arrest and cognisance, often the period of most intense and most damaging media coverage, is a zone in which the Contempt of Courts Act offers no protection to the accused.

This is not a peripheral limitation. It is structural. The Act was designed with a particular understanding of when judicial proceedings begin, and that understanding does not accommodate the realities of modern media coverage, in which the decisive moment for public opinion formation occurs at or shortly after arrest, long before any charge sheet is filed. The Law Commission of India recognised this with considerable clarity in its two-hundredth report in 2006.[22] The Commission observed that the definition of "pending" was inconsistent with the constitutional requirement of protecting fair trial rights, recommended that arrest be treated as the starting point of pendency for contempt purposes, and noted that this approach had already

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been adopted in the United Kingdom. The report was submitted nearly two decades ago. Its recommendations have not been enacted. The gap it identified has not been closed.

B. Press Regulation: Voluntary, Fragmented, and Unenforceable

Outside the contempt framework, the regulation of media reporting on criminal matters is dispersed across a collection of instruments that share two features: they are, in effect, voluntary, and they are fragmented in scope. The Press Council of India, established under the Press Council Act, 1978,[23] issues norms of journalistic conduct that address reporting on criminal matters and include directions against publishing alleged confessions and against framing that could compromise the right to a fair trial. These norms are, as a matter of both law and practice, unenforceable. The Council can censure a publication, but it cannot impose fines, suspend operations, or grant any form of relief to an aggrieved individual. More fundamentally, the Press Council's jurisdiction extends only to print media. The television channels and digital platforms that today drive pre-trial media coverage are entirely outside its reach.

Attempts to regulate broadcast media through the Programme Code issued under the Cable Television Networks (Regulation) Act, 1995[24] have not produced any meaningful restraint on pre-trial coverage. The News Broadcasting Standards Authority, a voluntary industry body, operates without universal membership and without legally enforceable sanctions.[25] The result is a regulatory landscape in which the institutions most responsible for producing media trials, specifically television news channels with national reach and round-the-clock schedules, are subject to no binding legal constraint on their pre-trial reporting at all.

C. Judicial Postponement Orders: Reactive and Insufficient

The Supreme Court's judgment in *Sahara v. SEBI*[26] represents the most significant judicial attempt to develop a mechanism for restraining prejudicial media coverage. The Constitution Bench held that courts have inherent power, derived from their constitutional mandate to ensure fair trials and from the contempt jurisdiction under Articles 129 and 215 of the Constitution, to issue orders postponing the publication of information that would create a substantial risk of prejudice to pending proceedings. This is an important development, and it should not be dismissed. But it has limitations that prevent it from serving as a comprehensive or systemic solution.

The first limitation is that the mechanism is reactive. Postponement orders are sought after coverage has begun, and they require the aggrieved party to approach a High Court or the

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Supreme Court before the damaging publication occurs. Given the speed of contemporary digital and broadcast media, meaningful prior intervention is practically available only in a small subset of high-profile cases where institutional resources permit rapid judicial engagement. The second limitation is that the mechanism applies only to proceedings that are "pending" in the conventional sense; it does not address the pre-trial phase that precedes cognisance. The third and most fundamental limitation is that the postponement order mechanism is inherently case-specific. It does not establish general standards, impose obligations on media organisations across the board, or create any deterrent effect beyond the individual case in which relief is sought. It addresses the symptom in individual cases without resolving the structural conditions that produce pre-trial media trials as a systematic phenomenon.

D. Law Commission's 200th Report (2006): Recognised but Unremedied

The most direct evidence of the inadequacy of the existing framework is the fate of the Law Commission's two-hundredth report. The Commission identified the arrest-to-cognisance gap, characterised it as constitutionally problematic, proposed specific legislative amendments to close it, and submitted its report in 2006. In the nearly two decades that have elapsed, the recommendations have not been enacted. This is significant for the argument advanced in this paper in two respects. First, it establishes that the problem has been authoritatively recognised: this is not a novel concern requiring fresh identification, but a documented constitutional failure that has resisted correction. Second, it raises the question of why legislative correction has not occurred, pointing toward the political economy of media regulation. Broadcasting organisations are powerful institutional actors with significant capacity to resist regulation; the costs of non-regulation fall on individual accused persons who are, by definition, politically marginal. This structural asymmetry helps explain why expert recommendations have not produced legislative action, and it reinforces the argument that deliberate legislative intervention is needed precisely because more convenient forms of relief have failed.

E. Why the Framework Fails Structurally

Taken together, the existing instruments, the Contempt of Courts Act, the Press Council regime, and the judicial postponement mechanism, fail not because they are poorly administered but because they are structurally incapable of addressing the problem they are asked to address. The Contempt of Courts Act excludes the pre-trial phase by design. Press

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regulation is voluntary, fragmented, and inapplicable to the media platforms that carry the most responsibility for pre-trial coverage. The postponement mechanism is reactive and case-specific. No combination of these tools can fill a gap that the legislative framework itself has created. Only legislative action can do that.

IV. The Need for Legislative Reform and a Proposed Framework

A. Why Judicial Guidelines Are Insufficient

Before turning to the proposed reform, it is worth addressing an argument sometimes made in response to calls for legislative action: that the existing contempt jurisdiction, properly exercised, is sufficient and that what is needed is not new legislation but better use of existing tools. This argument underestimates the structural character of the problem. The inadequacy of the existing framework is not primarily a matter of judicial will or administrative capacity; it is a matter of legal architecture. No exercise of judicial creativity can remedy gaps that are created by the legislation itself. Judicial guidelines, however thoughtfully crafted and diligently enforced, also lack the universality, enforceability, and democratic legitimacy of enacted law. The Kerala High Court, in a 2024 judgment,[27] characterised unchecked pre-verdict media coverage as equivalent to a "kangaroo court" and explicitly called on the legislature to enact a statutory code of conduct for media reporting in criminal matters. That call has not yet been answered.

B. The Comparative Context: The United Kingdom's Contempt of Court Act, 1981

The United Kingdom's experience with regulating pre-trial media coverage is instructive, not as a template for direct transplantation, but as evidence that the legislative framework this paper proposes is both achievable and effective. The UK Contempt of Court Act, 1981,[28] was enacted in the aftermath of the European Court of Human Rights' judgment in *Sunday Times v. United Kingdom*,[29] which held that the then-applicable common law of contempt was too uncertain to constitute a legitimate basis for restricting press freedom. The 1981 Act replaced the common law with a statutory strict liability rule: a publication attracts contempt liability if it creates a substantial risk that the course of justice in the proceedings will be seriously impeded or prejudiced, regardless of the publisher's intent.

The most significant feature of the Act is the determination of when proceedings become "active"; once they do, the strict liability rule applies. Under the Act's provisions, criminal proceedings are active from the time of arrest, the issuance of a warrant, or the issuance of a

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summons, whichever occurs first.[30] This is precisely the extension of the temporal scope of contempt liability that the Indian Law Commission recommended in 2006. The substantive standard, whether the publication creates a "substantial risk" that proceedings will be "seriously impeded or prejudiced," was elaborated by the Court of Appeal in *Attorney General v. Guardian Newspapers Ltd.*,[31] which confirmed that both elements must be satisfied: the risk must be more than speculative, and the prejudice must be more than trivial. This double threshold has proven workable in practice, protecting legitimate journalism, including factual reporting of arrests and matters of genuine public concern, while providing meaningful legal constraint on guilt-presuming, sensationalised coverage.

There are contextual differences between India and the United Kingdom that counsel against direct adoption of the UK model. The UK does not have the same scale of twenty-four-hour satellite news coverage or the degree of digital media penetration that characterises the Indian media environment. The enforcement mechanism under the 1981 Act, vested in the Attorney General, does not translate straightforwardly into the Indian institutional context. And the absence of jury trials in India means that the UK Act's concern with jury pool contamination does not apply directly; the Indian framework must be articulated in terms of judicial impartiality and investigative integrity rather than jury contamination. These differences argue for adaptation rather than transplantation, and the framework proposed below is designed with the Indian constitutional and institutional context in mind.

C. The Three-Tiered Framework

Tier One is an amendment to the Explanation to Section 3 of the Contempt of Courts Act, 1971, to include arrest as the event from which criminal proceedings are treated as "pending" for the purpose of contempt liability. This is the most direct and constitutionally grounded reform available. It does not require the creation of any new legal principle; it requires only the extension of an existing framework to the period that the Law Commission identified, nearly two decades ago, as its most important gap. From the moment of arrest, any publication that creates a substantial risk of serious prejudice to the accused's right to a fair trial would attract contempt liability. This would not prohibit pre-trial reporting: factual accounts of an arrest, the nature of the allegations, and matters of genuine public concern would remain fully permissible. What would become legally constrained is the kind of guilt-presuming narrative construction, including the broadcasting of alleged confessions, the exposure of the accused's private history, and the attribution of motive and character, that characterises the worst

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instances of trial by media. The constitutional validity of this amendment flows directly from *Sahara v. SEBI*,[32] in which the Constitution Bench held that Article 19(1)(a) may be restricted to protect the Article 21 presumption of innocence, provided the restriction is prescribed by law and proportionate to the harm it addresses. An amendment extending contempt liability to the pre-trial phase satisfies both requirements.

Tier Two establishes a statutory public-interest test as the governing standard for assessing pre-trial publications. This test draws on the distinction articulated in *Nilesh Navalakha*[33] between information that is genuinely in the public interest and information that the public is merely interested in. Under the proposed test, a pre-trial publication that creates a prima facie risk of prejudice would not attract contempt liability if the publisher can demonstrate, first, that the information disclosed serves a genuine public interest, relating to accountability, institutional conduct, or public safety, and, second, that the disclosure is proportionate to that interest, meaning that a less prejudicial form of reporting could not have served the same public interest. This is consistent with the proportionality approach endorsed by the Supreme Court in *Shreya Singhal v. Union of India*,[34] which requires any restriction on speech to be no broader than necessary to achieve its legitimate aim. The test acknowledges that not all pre-trial reporting is harmful: investigations into institutional corruption, reporting on public safety failures, and coverage of matters where the public has a legitimate accountability interest would remain permissible. What would be legally constrained is coverage that exploits public fascination to maximise viewership without serving any legitimate journalistic or accountability purpose.

Tier Three is the creation of an independent statutory Media Conduct Authority with jurisdiction over all forms of media, print, broadcast, and digital, and with genuine enforcement powers. The fragmentation of the existing regulatory architecture, in which no single body has comprehensive jurisdiction and nobody has meaningful enforcement authority, means that no existing institution is capable of addressing pre-trial media coverage comprehensively. The proposed Authority would fill this institutional gap. Its mandate would include the power to receive complaints from accused persons, to investigate alleged violations of the pre-trial publication standards established under Tiers One and Two, to issue cease-and-desist orders where ongoing coverage creates a substantial risk of serious prejudice, to impose financial penalties proportionate to the severity of the violation and the resources of the offending organisation, and to refer cases of serious or persistent contemptuous publication to the appropriate court. The Authority would also issue guidelines that elaborate on the application of the public interest test, providing media organisations with practical guidance while

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maintaining the deterrent effect of enforceable sanctions.

D. Constitutional Validity of the Proposed Framework Under Article 19(2)

Any restriction on media freedom must be justified as a reasonable restriction under Article 19(2), which permits limitations on press freedom in the interests of contempt of court and the administration of justice. The proposed framework satisfies the applicable constitutional standard on all three dimensions. The restriction is prescribed by law, contained in an amendment to the Contempt of Courts Act and the establishing legislation of the Media Conduct Authority. The legitimate aim is the protection of the Article 21 right to a fair trial and the presumption of innocence, an aim that the Supreme Court has already held, in Sahara v. SEBI, to be constitutionally sufficient to justify a restriction on Article 19(1)(a).[35] The restriction is proportionate: it applies only from the point of arrest, only to publications that create a substantial risk of serious prejudice, and only subject to a public interest exception for genuine accountability journalism. It does not prohibit reporting of criminal cases; it regulates the most damaging forms of pre-trial coverage in the most targeted manner available.

Conclusion

This paper has examined two research questions that are analytically distinct but constitutionally connected. On the first question, whether pre-trial media reporting violates the accused's right to a fair trial and presumption of innocence under Article 21, the answer this paper has developed is clearly affirmative. Pre-trial media coverage inflicts constitutional harm in two distinct ways: it destroys the presumption of innocence in public opinion, creating a social verdict that precedes any judicial determination and that no subsequent acquittal can fully undo, and it contaminates the conditions for a fair trial, creating pressures on witnesses, investigating agencies, and courts that are fundamentally incompatible with the atmosphere of judicial calm that Article 21 requires. The constitutional basis for this conclusion runs from Maneka Gandhi through Zahira Habibullah Sheikh to the Constitution Bench's holding in Sahara v. SEBI, which placed the presumption of innocence squarely within Part III.

On the second question, whether the existing legal framework adequately addresses this harm, the answer is equally clear. The Contempt of Courts Act, 1971, excludes the pre-trial phase from its operation by structural design, a gap identified by the Law Commission in 2006 and left unremedied. Press regulation is voluntary, fragmented, and inapplicable to the broadcast and digital platforms most responsible for pre-trial coverage. The judicial postponement

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mechanism is reactive, case-specific, and practically inaccessible to most accused persons. Taken together, these instruments leave the most constitutionally vulnerable phase of the criminal process effectively unregulated.

The three-tiered framework proposed in Part IV, comprising an amendment to the Contempt of Courts Act extending the scope of contempt liability to the point of arrest, a statutory public interest test providing a principled standard for permissible pre-trial coverage, and an independent regulatory authority with jurisdiction over all media and genuinely enforceable powers, represents what this paper argues is the constitutionally adequate response. The United Kingdom's experience informs this framework, which is adapted to the Indian context and grounded in the Supreme Court's existing doctrine. The underlying argument is simple: the presumption of innocence is a fundamental right, and the State has a constitutional obligation to protect it. That obligation has not been discharged. It is time that it was.

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[8]The Ryan International School matter (2017) involved the murder of a student in Gurugram. A bus conductor was arrested and subjected to intensive pre-trial media coverage alleging sexual assault and murder; he was subsequently exonerated when the actual perpetrator, a fellow student, was identified. See Press Council of India, Report on Media Trial 14 (2018).

[9]State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600, ¶ 75 (India).

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