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MEDIA TRIALS ACROSS JURISDICTIONS: STRENGTHENING JUDICIAL INDEPENDENCE THROUGH LEGAL REFORM

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Abstract

The emergence of twenty-first century digital media has fundamentally transformed the relationship between the press, the judiciary, and society. While the media continues to serve as the "fourth pillar of democracy" by promoting transparency, exposing corruption, and facilitating public discourse, the growing phenomenon of media trials has generated serious concerns regarding judicial independence and the administration of justice. Through continuous television debates, sensational reporting, social media campaigns, and speculative narratives, the media increasingly shapes public perception of ongoing criminal investigations and judicial proceedings, often declaring individuals guilty long before a court reaches its verdict. Such parallel adjudication not only undermines the presumption of innocence but also creates an environment in which judicial institutions may face indirect public pressure.

This article undertakes a comparative analysis of legal frameworks governing media trials across selected jurisdictions, including the United Kingdom, the United States, Canada, Australia, Singapore, and India, to examine how different legal systems balance freedom of the press with the constitutional imperative of preserving judicial independence. The study analyses statutory provisions, judicial precedents, contempt laws, reporting restrictions, sub judice rules, and ethical standards regulating media coverage of pending proceedings. It demonstrates that although freedom of expression is recognised as a fundamental democratic value, most mature constitutional democracies impose reasonable limitations where unrestricted publicity poses a real risk to the fairness of judicial proceedings or public confidence in the justice system.

Drawing upon comparative best practices, the article proposes a balanced legal reform model that strengthens judicial independence without compromising press freedom. It recommends clearer statutory guidelines governing reporting of pending proceedings, greater accountability for prejudicial publications, stronger self-regulatory mechanisms within the media industry, and judicially enforceable safeguards to prevent parallel trials. Rather than advocating censorship, the study supports a constitutional model based on responsible journalism, proportional restrictions, and institutional accountability. It concludes that an independent judiciary and a free press are complementary pillars of constitutional democracy, and that preserving their delicate balance requires a legal framework that protects both the public's right to know and every individual's right to an impartial and fair administration of justice.

Keywords: Media Trial, Judicial Independence, Comparative Law, Freedom of the Press, Fair Trial, Constitutional Law

1. INTRODUCTION

> "Excessive prejudicial publicity leading to usurpation of functions of the court not only interferes with the administration of justice but may also prejudice or pervert the course of justice"
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> — Sahara India Real Estate Corp. Ltd. v. SEBI[1]

The media plays a pivotal role in every democratic society by disseminating information, promoting transparency, and acting as a watchdog over the functioning of public institutions. Its ability to shape public opinion and facilitate informed democratic discourse makes it an indispensable pillar of governance. However, the growing influence of print, electronic, and digital media has also given rise to a phenomenon commonly referred to as **"**trial by media," wherein the media, through sensational reporting and speculative commentary, creates public perceptions regarding the guilt or innocence of an accused even before a court of law has

[1](2012) 10 SCC 603.

adjudicated the matter. Such reporting often extends beyond objective journalism and risks undermining the fundamental principles of criminal justice, particularly the presumption of innocence and the right to a fair trial.

The increasing frequency of media trials has emerged as a significant challenge for legal systems across the world. While the freedom of the press is recognised as an essential component of democratic governance, it is not an unfettered right and must be exercised in a manner that does not prejudice ongoing judicial proceedings or erode public confidence in the administration of justice. Excessive publicity surrounding criminal investigations and pending trials may influence witnesses, affect investigative processes, create public pressure on courts, and irreparably damage the reputation of individuals who have not yet been found guilty. Consequently, striking an appropriate balance between freedom of expression and judicial independence has become one of the most complex constitutional issues of the modern era.

Different jurisdictions have adopted diverse legal approaches to address this challenge. Some countries rely on stringent contempt of court laws to prevent prejudicial publications, while others place greater emphasis on constitutional protections for press freedom, supported by procedural safeguards to preserve the fairness of trials. These varying approaches reflect differences in constitutional traditions, legal systems, and societal values, but they also provide valuable guidance for jurisdictions seeking to strengthen judicial independence without compromising democratic freedoms.

1.1 Research Problem

The rapid expansion of print, electronic, and digital media has significantly increased the incidence of media trials, where ongoing judicial proceedings are subjected to extensive public scrutiny and sensational reporting. While freedom of the press is an indispensable component of a democratic society, unchecked media coverage of sub judice matters often threatens the constitutional principles of presumption of innocence, judicial impartiality, and the right to a fair trial. Different jurisdictions have adopted diverse legal mechanisms to regulate prejudicial publicity and protect the administration of justice; however, there is no uniform approach capable of striking an effective balance between press freedom and judicial independence. In India, despite constitutional safeguards and judicial interventions, the absence of a comprehensive statutory framework continues to create uncertainty regarding the permissible limits of media reporting during pending proceedings. This raises the need to critically examine and compare the legal frameworks of different jurisdictions to identify best practices and recommend reforms that can strengthen judicial independence without unduly restricting the freedom of the press.

1.2 Hypothesis

The freedom of the press is indispensable to a democratic society and the absence of a balanced legal framework regulating media trials undermines judicial independence and the right to a fair trial. A comparative analysis of different jurisdictions demonstrates that effective legal safeguards can reconcile press freedom with the administration of justice without compromising either constitutional value.

1.3 Objective

The primary objective of this study is to critically examine the phenomenon of media trials through a comparative analysis of selected jurisdictions and evaluate their legal mechanisms for balancing freedom of the press with the right to a fair trial. The study seeks to analyse the constitutional, statutory, and judicial safeguards adopted in countries such as the United States, the United Kingdom, Canada, Australia, Switzerland, and Sri Lanka to protect judicial independence from prejudicial media reporting. It further aims to identify best practices, assess their suitability within the Indian legal framework, and propose legal and policy reforms that strengthen judicial independence while preserving the essential role of a free and responsible press in a democratic society.

1.4 Research Methodology

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2. INTERNATIONAL LEGAL FRAMEWORK AND COMPARATIVE REGULATION OF MEDIA TRIALS

Freedom of expression and the freedom of the press are universally recognised as indispensable elements of a democratic society. At the same time, every legal system acknowledges that unrestricted media reporting may adversely affect the administration of justice, particularly where criminal proceedings are pending. The challenge, therefore, lies in maintaining an appropriate balance between the public's right to receive information and an accused person's right to a fair and impartial trial. While international human rights instruments strongly protect freedom of expression, they simultaneously recognise that this freedom is subject to reasonable restrictions where necessary to safeguard judicial independence, public order, privacy, and the rights of others. The phenomenon of media trial has emerged as a significant challenge across jurisdictions due to the rapid expansion of electronic, print, and digital media. Excessive publicity surrounding ongoing investigations and judicial proceedings often creates public perceptions regarding the guilt or innocence of accused persons even before courts have examined the evidence.

This chapter examines the international legal framework governing media reporting of judicial proceedings by analysing major international human rights instruments that recognise both freedom of expression and the right to a fair trial. It further undertakes a comparative study of selected jurisdictions, namely the United States, the United Kingdom, Canada, Australia, Switzerland and Sri Lanka, to evaluate the legislative and judicial measures adopted to regulate prejudicial publicity while preserving democratic values. Such a comparative analysis provides valuable guidance for strengthening India's legal framework relating to media trials.

2.1 International Legal Framework Governing Media Trials

2.1.1 The International Bill of Human Rights[2]

The International Bill of Human Rights comprises the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Civil and Political Rights, 1966 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). These instruments collectively establish the international framework for protecting fundamental human rights, including freedom of expression and the right to a fair trial.

Article 19 of the UDHR and Article 19 of the ICCPR guarantee freedom of opinion and expression, including the freedom to seek, receive, and impart information through any media. However, this freedom is not absolute. Under Article 19(3) of the ICCPR, restrictions may be imposed by law where necessary to protect the rights of others or maintain public order.

At the same time, Article 10 of the UDHR and Article 14 of the ICCPR guarantee every individual the right to a fair and public hearing before an independent and impartial tribunal, while recognising the presumption of innocence until guilt is proved according to law. Sensational or prejudicial media reporting that portrays an accused as guilty before judicial determination may therefore undermine these guarantees by influencing public opinion and affecting the fairness of judicial proceedings.

2.1.2 The Universal Declaration of Human Rights (UDHR)[3]

The Universal Declaration of Human Rights (UDHR) constitutes the foundation of modern international human rights law. Article 19 guarantees every individual the right to freedom of opinion and expression, including the freedom to seek, receive and impart information through any media regardless of frontiers. Simultaneously, Article 10 guarantees every person the right to a fair and public hearing by an independent and impartial tribunal, while Article 11 embodies the fundamental principle that every person charged with a criminal offence shall be presumed innocent until proved guilty according to law.

2.1.3 International Covenant on Civil and Political Rights, 1966[4]

The International Covenant on Civil and Political Rights (ICCPR), which is legally binding upon its State Parties, reinforces the balance between free expression and fair trial rights. Article 19 guarantees freedom of expression but expressly permits restrictions where they are provided by law and are necessary for protecting the rights or reputations of others or for maintaining public order.

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[2]International Bill of Human Rights, OHCHR, https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights (last visited May 24, 2025).

[3]UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: https://www.refworld.org/docid/3ae6b3712c.html [accessed 24 May 2025]

[4]UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999 at 171, available at: https://www.refworld.org/docid/3ae6b3aa0.html [accessed 24 May 2025]

Article 14 guarantees every individual the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. It further recognises the presumption of innocence and requires that criminal proceedings be conducted fairly and without prejudice.

2.1.4 International Covenant on Economic, Social and Cultural Rights (ICESCR)[5]

The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) complements the International Bill of Human Rights by recognizing fundamental economic, social, and cultural rights essential to human dignity. Although the Covenant does not specifically regulate media reporting or media trials, its provisions are relevant because irresponsible media coverage can adversely affect the enjoyment of several rights guaranteed under the Covenant.

Article 15 of the ICESCR recognizes the right of every individual to participate in cultural life and to enjoy the benefits of scientific progress and cultural development. Sensational media reporting and trial by media may stigmatize individuals, resulting in social exclusion and limiting their ability to participate fully in cultural and community life. Similarly, adverse publicity may affect an individual's reputation, employment opportunities, mental well-being, and social standing, thereby indirectly impacting rights protected under the Covenant.

2.1.5 World Summit on the Information Society (WSIS)

The World Summit on the Information Society (WSIS) is a United Nations initiative launched in 2003 to promote the inclusive and responsible use of information and communication technologies (ICTs). Through the Geneva Declaration of Principles (2003) and the Tunis Agenda for the Information Society (2005), the WSIS recognized the importance of freedom of expression, universal access to information, and the responsible use of digital technologies while emphasizing respect for human rights and the rule of law.

Although the WSIS does not specifically address media trials, its principles are highly relevant in the digital era, where online news platforms and social media significantly influence public opinion. The rapid dissemination of information through digital media can enhance transparency and public awareness; however, sensational reporting, misinformation, and online campaigns may prejudice ongoing judicial proceedings and undermine the presumption of innocence. Consequently, the objectives of the WSIS support the need for balancing freedom of expression with the protection of fair trial rights and individual dignity.

The WSIS also advocates multi-stakeholder governance of the information society, encouraging governments, media organizations, civil society, and technology platforms to promote ethical communication and responsible dissemination of information. These principles reinforce the need for media accountability in reporting judicial proceedings without compromising the administration of justice.

2.2 Comparative Study of Media Trial among Countries

2.2.1 United States of America

The United States adopts one of the strongest constitutional protections for freedom of the press through the First Amendment to the U.S. Constitution, which prohibits laws abridging the freedom of speech and of the press. At the same time, the Sixth Amendment guarantees every accused person the right to a speedy and public trial before an impartial jury. Consequently, the American legal system constantly seeks to balance two competing constitutional values—freedom of the press and the right to a fair trial.

The debate over media trials gained national prominence during several high-profile criminal prosecutions, particularly the O.J. Simpson murder trial, where extensive live television coverage generated concerns regarding the ability of the accused to receive an impartial trial. Public opinion surveys conducted during the trial indicated widespread concern that excessive media coverage could prejudice judicial proceedings.[6]

Unlike several other jurisdictions, American courts are generally reluctant to impose prior restraints on the press. In Near v. Minnesota (1931)[7], the U.S. Supreme Court held that prior restraints on publication are presumptively unconstitutional except in exceptional circumstances. This principle was reaffirmed in New York Times Co. v. United States (The Pentagon Papers Case),[8] where the Court emphasized the heavy constitutional presumption against government restrictions on publication.

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[5]UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993 at 3, available at: https://www.refworld.org/docid/3ae6b36c0.html [accessed 24 May 2025]
[6]Don J. DeBenedictis, The National Verdict, A.B.A. J., Oct. 1994, at 52, 54.
[7]Near v. Minnesota, 283 U.S. 697, 721 (1931).
[8]403 U.S. 713 (1971).

Although direct restrictions on media reporting are rarely permitted, American courts have recognized that excessive publicity may undermine the fairness of criminal proceedings. In Sheppard v. Maxwell[9], the Supreme Court set aside a murder conviction after observing that intense media publicity had transformed the trial into a "carnival atmosphere." The Court held that trial judges have an affirmative duty to protect the accused from prejudicial publicity by adopting measures such as change of venue, postponement of trial, jury sequestration, and careful control of courtroom proceedings.

Similarly, in Nebraska Press Association v. Stuart[10], the Supreme Court struck down a judicial order restraining the press from publishing information relating to a pending murder trial. The Court ruled that prior restraints on publication are constitutionally permissible only in the rarest of circumstances and that alternative measures should ordinarily be employed to safeguard the fairness of criminal proceedings.

The American approach therefore gives primacy to freedom of the press while simultaneously requiring courts to adopt procedural safeguards that preserve the accused's right to a fair trial. Instead of restricting publication, the emphasis remains on judicial case management through remedies such as jury selection, change of venue, continuance, sequestration of jurors, and judicial instructions. This model demonstrates that constitutional rights need not be viewed as mutually exclusive; rather, both can be harmonized through effective judicial supervision.

2.2.2 United Kingdom

The United Kingdom has developed one of the most comprehensive legal frameworks for balancing freedom of the press with the right to a fair trial. Although the British legal system strongly protects press freedom, it recognises that unrestricted media reporting may prejudice judicial proceedings and undermine the administration of justice.

The right to a fair trial is protected under Article 6 of the European Convention on Human Rights (ECHR)[11], which guarantees every person a fair and public hearing by an independent and impartial tribunal. While judicial proceedings are generally open to the public, Article 6 permits restrictions on media reporting where publicity would prejudice the interests of justice, protect juveniles, preserve privacy, or safeguard public order.

Historically, England followed a system of prior restraint through licensing of the press. The abolition of the Licensing Act in 1695, influenced by the writings of John Milton and John Locke[12], laid the foundation for modern press freedom. Later, William Blackstone clarified that freedom of the press meant the absence of prior censorship, but not immunity from legal consequences for unlawful publications[13]. This principle continues to shape the British approach, where press freedom is accompanied by legal responsibility.

Contempt of Court Act, 1981

The principal legislation governing media reporting of pending judicial proceedings in the United Kingdom is the Contempt of Court Act, 1981, enacted following the decision of the European Court of Human Rights in Sunday Times v. United Kingdom[14]. The Act seeks to protect the integrity of ongoing judicial proceedings by preventing publications that create a substantial risk of serious prejudice to the administration of justice.

The Act introduces the strict liability rule, under which a publication may amount to contempt irrespective of the publisher's intention if it substantially risks prejudicing active legal proceedings. Proceedings generally become active upon arrest, issuance of a warrant or summons, or filing of an indictment, and remain active until their final disposal.

Key features of the Act include:

- prohibition of publications that seriously prejudice active proceedings;
- restrictions on recording and broadcasting court proceedings without judicial permission;
- protection of journalistic sources in limited circumstances;
- powers to punish contempt with imprisonment for up to two years, an unlimited fine, or both.

[9]384 U.S. 333 (1966).
[10]427 U.S. 539 (1976).
[11]Council of Europe, "Guide on Article 6 of the European Convention on Human Rights - Right to a Fair Trial (Criminal Limb)",European Court of Human Rights, Dec. 31, 2020, available at: https://www.refworld.org/docid/6048e2a00.html (last visited May 24, 2026).
[12]Johne Locke and the end of the Licensing Act", Free Speech History (1695), available at:http://www.freespeechhistory.com/timeline/1695-end-of-the-licensing-act/ (last visited May 24, 2026).
[13]Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt1_2_1/
[14]App No 6538/74, A/30, [1979] ECHR 1, (1979-80) 2 EHRR 245, (1979) 76 LSG 328, IHRL 21 (ECHR 1979), 26th April 1979, European Court of Human Rights [ECHR]

The United Kingdom's approach demonstrates that press freedom and fair trial rights are not mutually exclusive. By imposing carefully defined legal restrictions only during active proceedings, the Contempt of Court Act, 1981 seeks to preserve judicial independence while maintaining the essential role of the media in a democratic society.

2.2.3 Canada

Canada recognizes both freedom of the press and the right to a fair trial as fundamental constitutional values under the Canadian Charter of Rights and Freedoms, 1982. Section 2(b) guarantees freedom of expression, including freedom of the press and other media of communication, while Section 11(d) guarantees every accused the right to a fair and public hearing by an independent and impartial tribunal. Unlike some jurisdictions, the Charter permits reasonable restrictions on these rights where such limitations are demonstrably justified in a free and democratic society.

The Canadian legal system acknowledges that the media performs an essential democratic function by informing the public about criminal proceedings and promoting transparency in the administration of justice. However, extensive pre-trial publicity, particularly in sensational criminal cases, may prejudice jurors, influence public opinion, and undermine the presumption of innocence. Canadian scholarship has therefore recognized "trial by media" as a process in which an accused is effectively judged in the court of public opinion before the commencement or conclusion of judicial proceedings.

To minimize the adverse effects of prejudicial publicity, the Canadian Judicial Council (CJC)[15] has issued guidelines identifying categories of information that should not be publicized during pending criminal proceedings. These include reported confessions, previous criminal records, inadmissible evidence, and sensationalized material that directly associates the accused with the offence before judicial determination. Such guidelines seek to preserve juror impartiality while maintaining responsible media reporting.

Canadian courts also possess significant procedural safeguards to protect fair trial rights. Publication bans may be imposed where necessary, proceedings may be conducted in camera in exceptional circumstances, and courts retain contempt powers to prevent publications that interfere with the administration of justice. The identities of juvenile accused, victims of sexual offences, and certain protected witnesses are also withheld from publication to safeguard privacy and the fairness of proceedings. These restrictions have consistently been upheld as reasonable limitations on freedom of expression under the Charter.

Canada's experience further demonstrates that excessive media coverage may contribute to wrongful convictions. Studies of cases such as Guy Paul Morin, Robert Baltovich, and James Driskell revealed that sensational reporting often portrayed suspects negatively, generated public fear, and created moral outrage before the completion of judicial proceedings. These cases highlighted the need for responsible reporting and reinforced the importance of judicial safeguards to ensure that verdicts are based solely on evidence presented in court rather than public sentiment.

2.2.4 Sri Lanka

Sri Lanka recognises freedom of expression and media freedom as essential components of a democratic society. However, the exercise of media freedom is subject to reasonable restrictions to ensure that it does not interfere with the administration of justice or other public interests.

The Constitution of Sri Lanka declares that sovereignty resides in the people under Article 3**.** Although freedom of the press is not expressly mentioned, Article 14(1)(a) guarantees every citizen the freedom of speech and expression, including publication. This constitutional protection is, however, subject to the limitations prescribed under Article 15, which permits restrictions in the interests of national security, public order, racial and religious harmony, parliamentary privilege, contempt of court, defamation, and incitement to an offence. Sri Lankan courts have consistently recognised that while freedom of expression is fundamental, it is not absolute. The judiciary retains the constitutional responsibility to ensure that restrictions imposed on media freedom are reasonable and proportionate.

To regulate journalistic standards, the Sri Lanka Press Council was established in 1973**.** Although intended to promote ethical journalism and protect press freedom, the Council was also vested with powers to regulate publications concerning government affairs, official secrets, and defamatory material. Critics have argued that these extensive powers often restricted media freedom rather than strengthening it.

[15]Canadian Judicial Council, The Canadian Justice System and the Media (Ottawa: CJC, 2010).

Sri Lanka also regulates media reporting through the Parliament (Powers and Privileges) Act, 1953[16], as substantially amended in 1978. The amendments empowered Parliament to punish publications that interfere with parliamentary proceedings, including false reporting, prohibited publications, and defamatory statements concerning Parliament or its members. Parliament may impose fines or imprisonment for serious breaches of privilege, although judicial review remains available in appropriate cases.

The decision of Nadesan v. Parliament reaffirmed that criticism of Parliament made in good faith forms part of democratic discourse and cannot automatically be treated as a breach of parliamentary privilege. The case highlights the judiciary's role in maintaining a balance between legislative privilege and freedom of expression.

Sri Lanka follows a balanced constitutional approach by recognising both press freedom and the necessity of protecting the administration of justice. Constitutional limitations under Articles 14 and 15, together with laws relating to contempt of court and parliamentary privilege, seek to prevent media reporting from prejudicing judicial proceedings. The Sri Lankan framework demonstrates that while the media serves as an important democratic institution, its freedom must be exercised responsibly so that it does not undermine the right to a fair trial or public confidence in the judicial process.

2.2.5 Switzerland

Switzerland follows an inquisitorial system of criminal procedure, where the primary objective is to discover the material truth while ensuring the protection of the accused's procedural rights. The Swiss Criminal Procedure Code, 2011[17] particularly Articles 139–141, regulates the collection and admissibility of evidence and excludes evidence obtained through unlawful means. These provisions reinforce the principle that the search for truth cannot override the right to a fair trial.

Unlike many jurisdictions, the investigative stage of criminal proceedings in Switzerland is generally not open to the public. Investigative authorities do not officially disclose evidence before trial, thereby reducing the possibility of media interference during the investigation. Although media organisations may report on ongoing cases, official confidentiality helps minimise the risk of prejudicial publicity. Court hearings before first-instance courts are generally public, while proceedings relating to search warrants, preventive detention, and other compulsory measures remain confidential. Final judgments of the courts are publicly accessible, thereby ensuring transparency without compromising the fairness of the proceedings.

Switzerland has also adopted institutional mechanisms to regulate the media. The Federal Act on Radio and Television, 2006 (RTVA)[18] establishes the legal framework for broadcasting, while regulatory bodies such as the Federal Office of Communications (OFCOM), the Federal Media Commission, and the Independent Complaints Authority for Radio and Television supervise broadcasting standards and address complaints relating to media content.

Swiss law requires broadcasters to maintain a clear distinction between editorial content and advertisements and prohibits content that violates human dignity, promotes hatred, glorifies violence, or misleads the public. These regulatory measures seek to preserve responsible journalism and protect the integrity of public discourse.

2.2.6 Australia

Australia strongly upholds the principle that every accused person is presumed innocent until proven guilty and is entitled to a fair trial before an impartial court. Excessive media publicity in high-profile criminal cases has raised concerns regarding its potential influence on jurors and the administration of justice. Australian courts have therefore developed legal mechanisms to balance freedom of the press with the accused's right to a fair trial.

One of the primary safeguards is the use of suppression orders, which prohibit the publication of information that may prejudice ongoing judicial proceedings. These orders are issued only in exceptional circumstances where unrestricted reporting poses a substantial risk to the fairness of the trial. The Open Courts Act 2013 and similar legislation in other Australian jurisdictions regulate the grant of suppression orders by requiring courts to ensure that such restrictions are necessary and proportionate.

The significance of suppression orders was evident in the Cardinal George Pell[19]case, where publication restrictions were imposed to prevent prejudice during the criminal proceedings. Although the orders generated

[16]Parliament (Powers and Privileges) (Amendment) Act., Acts of Parliament, No. 21 of 1953
[17] Strafgesetzbuch (StGB), Swiss Criminal Procedure Code (Jan. 1, 1942), art. 139-141 (Switz.).
[18] Federal Act on Radio and Television [RTVA], March 24, 2006, as amended on January 1, 2018. (Switz.)
[19] François Kunc, "A Cardinal is Convicted", 93(4) Australian Law Journal 251(2019).

public criticism, they reflected the judiciary's commitment to protecting the integrity of the trial process. Likewise, the Ben Roberts-Smith[20] litigation highlighted how extensive media coverage and public allegations before the commencement of criminal proceedings could create a "trial by media," potentially undermining the presumption of innocence.

Australia also recognizes the doctrine of sub judice contempt, which prohibits publications that create a real risk of prejudicing pending legal proceedings. The law extends to traditional and digital media, reflecting the growing challenges posed by online platforms and social media. Legal commentators have recommended clearer statutory standards, stronger regulation of prejudicial online publications, and greater reliance on judge-alone trials in exceptional cases where impartial juries may be difficult to secure.

3. INDIA'S WAY FORWARD: COMPARATIVE PERSPECTIVES

The comparative study reveals that India already possesses a strong constitutional framework for balancing freedom of speech under Article 19(1)(a) and the right to life and fair trial under Article 21. Indian courts have repeatedly cautioned against media trials in cases such as M.P. Lohia v. State of West Bengal and Manu Sharma v. State (NCT of Delhi), while the Press Council of India has also prescribed norms requiring accuracy, fairness and responsible reporting. However, unlike several foreign jurisdictions, India lacks a comprehensive statutory mechanism specifically addressing prejudicial media reporting during pending criminal proceedings.

India can draw valuable lessons from the United Kingdom, where the Contempt of Court Act, 1981 imposes strict liability on publications creating a substantial risk of prejudicing active proceedings. Similarly, Australia's suppression orders and Canada's publication bans demonstrate effective judicial tools for preventing prejudicial publicity without imposing a blanket restriction on press freedom. Such mechanisms may be incorporated into Indian law through appropriate legislative reforms.

The experiences of Switzerland also suggest that maintaining confidentiality during the investigation stage and restricting disclosure of sensitive evidence can reduce the possibility of media trials. Further, all the jurisdictions studied emphasize ethical journalism and the presumption of innocence, indicating the need to strengthen self-regulation of both traditional and digital media in India. The rapid growth of social media further necessitates specific legal guidelines governing online reporting of pending criminal cases.

4. CONCLUSION AND SUGGESTIONS

The comparative study demonstrates that while every jurisdiction seeks to balance freedom of expression with the right to a fair trial, the methods adopted differ according to their legal traditions and institutional frameworks. Countries such as the United Kingdom, Canada, and Australia rely on contempt laws, publication bans, suppression orders, and judicial guidelines to prevent prejudicial publicity, whereas international instruments like the UDHR, ICCPR, and recent UN initiatives emphasize that freedom of expression must be exercised consistently with the protection of human rights and due process.

In India, the rapid growth of digital and social media has intensified the phenomenon of media trials, often influencing public perception long before judicial determination. Judicial observations in cases such as Sahara India, Shreya Singhal, Rhea Chakraborty, and Aryan Khan highlight the increasing need to safeguard the presumption of innocence without unduly restricting press freedom.

The comparative analysis suggests that India need not curtail media freedom but should strengthen mechanisms to regulate prejudicial reporting, particularly in the digital space. A balanced framework comprising judicial guidelines, responsible media practices, and proportionate regulation of online platforms would help preserve both democratic transparency and the constitutional guarantee of a fair trial.

[20] Christopher Knaus, "Ben Roberts-Smith Defamation Case: Ex-Soldier Ordered to Hand Over War Crime Inquiry Document, The Guardian (Nov.11,2020),available at: https://www.theguardian.com/australia-news/2020/nov/11/ben-roberts-smith-defamation-case-ex-soldier-ordered-to-hand-over-war-crimes-inquiry-documents(last visited Jun. 16, 2026).