

## LIBERTY ON TRIAL: MEDIA PUBLICITY, BAIL AND THE PRESUMPTION OF INNOCENCE IN WHITE-COLLAR CRIME PROSECUTIONS

**AUTHOR** – NANDITA SAHA, SYMBIOSIS LAW SCHOOL, HYDERABAD (SLSH)

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### ABSTRACT

The paper attempts to examine the constitutional tension between press freedom and the presumption of innocence in matters related to economic offences in India. The paper looks at how intense media coverage in cases related to money laundering and corporate fraud may influence the public perception and create a parallel form of judgment before judicial pronouncement. It further studies the impact of strict bail provisions under the Prevention of Money Laundering Act, 2002 and examines whether the reputational harm, when combined with the prolonged pre-trial detention, undermines the principle of innocence until proven guilty. By situating the issue within Articles 21 and 19(1)(a) of the Constitution and drawing limited comparative reference, the paper highlights the need to maintain a careful balance between transparency and fair trial rights in highly publicised economic offence cases.

**Keywords:** Trial by Media, Presumption of Innocence, Economic Offences, Prevention of Money Laundering Act 2002, Fair Trial.

### INTRODUCTION.

The adjudication of economic offences in India is happening not just in courts, but more in television studios, digital space and social media platforms, where the cases related to money laundering, corporate fraud and financial abnormalities are more prone to the attention of the media and turn the investigation into a spectacle and when this happens, the suspects are often characterised in unambiguous and morally charged language such as the alleged mastermind, the so called kingpin, or the architect of a scam even before a court decision is announced and this is what call “Trial by Media<sup>12</sup>” which is very dangerous in terms of constitutional issues when it comes in

touch with the principle of presumption of innocence until proven guilty.<sup>13</sup>

In the Indian Constitution, the presumption of innocence has been adjudicatively declared as an essential part of the Right to Life and Personal Liberty, as laid down in Article 21<sup>14</sup> and at the same time, Article 19(1)(a)<sup>15</sup> protects not only individual expression but also press freedom and the public’s right to access information<sup>16</sup>. This conflict between the two constitutional commitments is especially evident in white-collar and economic crime prosecutions when big financial crimes happen, especially those involving huge sums of money or political figures. They attract a lot of public anger and media attention, because of which the media coverage tends to strongly influence

<sup>13</sup> “ANDREW ASHWORTH, Four Threats to the Presumption of Innocence, 10 INTL J. EVIDENCE & PROOF 241, 243-249 (2006)”.

<sup>14</sup> “INDIA CONST. art. 21”.

<sup>15</sup> “INDIA CONST. art.19(1)(a)”.

<sup>16</sup> “Romesh Thappar v. State of Madras, AIR 1950 SC 124”.

<sup>12</sup> “R.k. Anand v. Registrar Delhi High Court, (2009) 8 S.C.C. 106”.

what society thinks about the accused person. This public perception becomes so powerful that people believe the accused is guilty even before the court decides the case, and in extreme situations, public opinion may become more influential than the actual judicial decision.<sup>17</sup>

The issue is seen as more complicated when media coverage happens at the same time as very strict economic crime laws; the situation tends to become more serious because laws like the Prevention of Money Laundering Act, 2002<sup>18</sup>, make it difficult for an accused person to get bail<sup>19</sup>, which results in prolonged detention in jail for a very long time even before the trial is completed. The uninterrupted media coverage damages a person's reputation, which acts like a form of punishment, even if the court has not yet decided that the person is guilty. As a result, the line between being accused and being guilty becomes blurred in the public mind; even if the person is later acquitted, the harm to their social standing, career, and public image may be impossible to fully repair.

The paper looks at whether media trials in economic offences violate the constitutional presumption of innocence and guarantees of fair trial by examining how press freedom, pre-trial publicity, and bail jurisprudence interact<sup>20</sup> and whether reputational harm has become an informal but effective aspect of white-collar crime punishment. By placing the modern practice in the context of constitutional theory as well as comparative outlook, the paper aims at examining the boundaries of media involvement in a criminal justice system that believes in the principle of transparency and fairness alike.

### LITERATURE REVIEW.

The constitutional tension between media freedom and the presumption of innocence has been examined extensively in the Indian legal

scholarship. The studies on pre-trial publicity argue that excessive media reporting tends to dilute the fairness of criminal proceedings by shaping public opinion prior to adjudication. One perspective on literature highlights how "trial by media" risks undermining the accused's right to a fair trial under Article 21, particularly when media reporting uses biased words or makes assumptions without proof<sup>21</sup>. Scholars have also analysed the doctrine of presumption of innocence as an implicit constitutional guarantee, arguing that pre-trial publicity may distort its practical application.<sup>22</sup>

At the same time, the bail law raises a connection between pre-trial detention and the presumption of innocence. Research published in the *National Law School of India Review* points out that the bail decisions often show tension between protecting personal liberty and preventing possible risks, suggesting that prolonged pre-trial incarceration may function as a de facto punishment<sup>23</sup>. Recent studies on bail under the Prevention of Money Laundering Act, 2002, criticise the "twin conditions" for bail, arguing that the statutory scheme risks the presumption of innocence by imposing stringent conditions on the accused.<sup>24</sup>

There is also an academic work on white-collar and economic offences that further contextualises these concerns. The studies of white-collar crime in India trace the conceptual foundation of the offence and highlight its socio-economic impact<sup>25</sup>. Additionally, critical examinations of money laundering prosecutions emphasise the expanding powers of investigative agencies and the restrictive bail regime governing economic offences. However, although research exists separately on media trials, bail laws, and economic offences as

<sup>17</sup> "Sahara India Real Estate Corp.Ltd v. SEBI, (2012) 10 SCC 603".

<sup>18</sup> "The Prevention of Money Laundering Act, no.15 of 2003 (India)".

<sup>19</sup> "Id. § 45; Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1".

<sup>20</sup> "State of Rajasthan v. Balchand, (1977) 4 SCC 308".

<sup>21</sup> "Sahar India Real Estate Corp. Ltd. v. SEBI, (2012) 10 SCC 603."

<sup>22</sup> "RATANLAL & DHIRAJLAL, THE LAW OF EVIDENCE 52-54 27<sup>th</sup> ed. 2019".

<sup>23</sup> "Aparna Chandra, *Bail and the Presumption of Innocence*, 26 Nat'l L. Sch. India Rev. 1 (2014)".

<sup>24</sup> "Aashish Gupta, Aditya Mukherjee & Puneeth Ganapathy, *Bail under PMLA: Presumed Guilty Until Proven Guilty?* 2023 SCC Online Blog Exp 7 (Mar. 2, 10.30 PM), [Bail under PMLA-Presumed Guilty Until Proven Guilty | SCC Times](https://www.sccjournal.in/Blog/2023/03/02/Bail-under-PMLA-Presumed-Guilty-Until-Proven-Guilty-SCC-Times/)".

<sup>25</sup> "EDWIN H. SUTHERLAND, *WHITE COLLAR CRIME* (Yale Univ. Press 1949)".

distinct domains, very limited work combines these areas to study how continuous media publicity and stringent bail provisions may collectively weaken the presumption of innocence in white-collar cases.

This paper builds on existing research by examining how media coverage, pre-trial detention, and reputational harm interact in economic offence cases and explores whether reputational damage acts as an informal form of punishment even before conviction.

### **RESEARCH QUESTION.**

- i. Whether media trial in economic offence prosecutions undermines the constitutional presumption of innocence and the right to a fair trial?
- ii. Whether pre-trial media narrative influences the public perception of guilt in white-collar crime cases?
- iii. Whether strict bail laws under the PMLA restrict liberty in media-driven economic offence cases?

### **RESEARCH OBJECTIVE.**

- i. To analyse the constitutional foundation of the principle of presumption of innocence and fair trial rights.
- ii. To analyse the extent to which media reporting of economic offences shapes public perception of guilt.
- iii. To examine whether strict bail rules and media attention together increase the difficulties faced by an accused person before conviction.

### **RESEARCH METHODOLOGY.**

The study adopts a doctrinal method by analysing the constitutional principles, statutory provisions and judicial decisions. The research is based on secondary sources, which include case laws, academic articles, legal commentaries and online legal databases. The relevant provisions of Article 21 and Article 19(1)(a) of the Constitution and statutory frameworks like the Prevention of Money

Laundering Act, 2002 have been examined to understand the relation between media publicity, bail laws, and the presumption of innocence in economic offence cases. The limited comparative perspective has also been undertaken to highlight how the other jurisdictions address prejudicial media reporting in criminal trials.

### **SCOPE AND LIMITATION OF THE STUDY.**

The study examines the relationship between media freedom and the presumption of innocence in economic offences cases in India. It mainly focuses on how media coverage and strict bail provisions under the Prevention of Money Laundering Act, 2002, affect the right to a fair trial and personal liberty under Article 21 and 19(1)(a) of the Constitution.

The study is limited to doctrinal legal research, which is based on secondary sources such as statutes, case laws, and academic writings and does not include empirical research or field studies.

### **I. CONSTITUTIONAL BALANCE BETWEEN FAIR TRIAL RIGHTS AND MEDIA FREEDOM.**

The Indian Constitution guarantees fundamental rights to every citizen to live a dignified life, and that has been consistently recognised by the Supreme Court of India as an essential facet of the guarantee of life and personal liberty under Article 21 of the Constitution<sup>26</sup>. Article 21 protects against deprivation of life and personal liberty except according to the procedure established by law, and the judicial interpretation of Article 21 has transformed this guarantee from a very narrow procedural safeguard into a very basic constitutional commitment to fairness, reasonableness and non-arbitrariness in criminal adjudication.

The landmark judgment in the case of Maneka Gandhi v. Union of India<sup>27</sup> has marked a decisive shift in the constitutional interpretation by holding that the procedure under Article 21 must

<sup>26</sup> "INDIA CONST. art.21".

<sup>27</sup> "Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248".

be fair, reasonable, and not arbitrary, fanciful or oppressive<sup>28</sup>. Because of the judicial interpretation, Indian constitutional law treats the procedure established by law as fair, just and reasonable and not just any procedure written in a statute and has developed the idea that criminal procedure must be fair, just and reasonable, not merely statutory rules. A law to exist must follow the constitutional values like fairness and dignity, and within this framework, the presumption of innocence is not just a rule about evidence in court, but it functions as a constitutional safeguard that limits the power of the State by making sure that a person cannot be treated as guilty unless the prosecution proves the guilt in court.

The principle of presumption of innocence ensures that the burden of establishing guilt lies upon the prosecution and that criminal sanction follows only upon proof beyond a reasonable doubt, and this principle affects the decisions made before trial, since guilt has not been established, and keeping someone in custody before conviction must be strongly justified. The idea that “bail is the rule and jail is the exception, as stated in the case of *State of Rajasthan v. Balchand*,<sup>29</sup> reflects the approach and emphasises that pre-trial detention should not become a form of punishment, as its purpose is limited to ensuring that the accused appears for trial and does not influence the investigation or tamper with the evidence.

Similarly, in the case of *Sanjay Chandra v. CBI*<sup>30</sup>, the Supreme Court held that the seriousness of an allegation alone cannot justify the long period of pre-trial detention. The Court stressed on the fact that personal liberty must be balanced with the presumption of innocence and that punishment can be given only after conviction. However, the Constitution does not protect liberty in isolation. Article 19(1)(a) guarantees freedom of speech and expression, which includes freedom of the press and the public’s right to receive information and in

Criminal prosecutions, cases that involve public officials, economic crimes, or institutional wrongdoing, which are matters of public importance there media’s reporting promotes transparency, enables public scrutiny, and supports democratic accountability which clearly underlines why media is called as the fourth pillar of democracy.

The freedom of speech is important but not absolute, and there are reasonable restrictions to it under Article 19(2) in the interest of national security, contempt of court and proper administration of justice. This means that free expression cannot be allowed to interfere with a fair trial as this issue becomes serious in cases where there is heavy media coverage before the trial begins. The Supreme Court addressed the longstanding issue in the case of *Sahara India Real Estate Corp. Ltd. v. SEBI*, where it was recognised that the excessive or prejudicial reporting can interfere with the administration of justice, but at the same time, it respected the importance of press freedom and allowed courts to pass limited postponement orders when there is a real risk of prejudice.<sup>31</sup>

The relationship between Article 21 and Article 19(1)(a) becomes particularly sensitive in high-profile criminal cases, where the media has the right to inform the public, but the accused also has the right to be presumed innocent until proven guilty. In the high-profile cases, the media coverage suggests guilt in advance, which undermines the principle of presumption of innocence, as the public narratives affect reputation, institutional behaviour, and even the broader environment in which judicial decisions are understood.

The Constitutional question that comes up is not whether media reporting should be generally restricted; rather, the issue is in identifying when reporting stops from being informative to prejudicial. A Criminal trial should not only be fair but it should also appear fair to the public, and when a person accused of a crime is judged by the media before the court

<sup>28</sup> “RATANLAL & DHIRAJLAL, *The Law of Evidence* 52–54 (27th ed. 2019)”.

<sup>29</sup> “*State of Rajasthan v. Balchand*, (1977) 4 S.C.C. 308”.

<sup>30</sup> “*Sanjay Chandra v. CBI*, (2012) 1 S.C.C. 40”.

<sup>31</sup> “*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 S.C.C. 603”.

gives it decision, it can harm the person's right to a fair trial. Therefore, the Constitution need to create a balance where transparency is not turning into prejudgment, and liberty should not be taken lightly due to the narratives that are not based on courtroom evidence. The freedom of the press and right to fair trial are not opposed; both are important and independent and must be tried in a way that protects and respects the other. This balance becomes especially important when economic offences involve media coverage and bail decisions.

## II. TRIAL BY MEDIA IN ECONOMIC OFFENCES AND ITS IMPLEMENTATION.

In criminal cases, media reporting is not considered unconstitutional, because the media is the open justice system, which means that the court proceedings are generally public and judicial decisions can be informed to the public and are subject to scrutiny, but the problem arises when such reporting turns into what is called "trial by media"<sup>32</sup>. In such situations, the media goes beyond traditional reporting of facts and starts creating narratives that form the public opinion and may influence on how people look at the accused before the court gives its decision. The Supreme Court of India has addressed this issue in the case of R.K. Anand v. Delhi High Court<sup>33</sup>, where the court acknowledged that the investigative journalism plays a very positive role in exposing corruption and wrongdoing in the society, but at the same time, it warned that the media should not conduct a parallel trial<sup>34</sup> through television debates or press discussions. The Court stated that if media activism goes beyond its limits, it can interfere with the administration of justice, hampering the judicial independence and therefore restrictions are necessary to protect the judicial independence and ensure a fair trial in the criminal justice system.

Media trials in economic and white-collar offences have a very complicated nature as

compared to traditional crime because traditional crime usually involves physical violence, but economic offences involve financial transactions, companies, and regulatory systems. These cases often include allegations of large amounts of corruption, failures in corporate governance, or misuse of public office, and because of the large financial impact, these cases often attract strong public attention and sensational media coverage. The media reports thus highlight the moral wrongdoing and betrayal of public trust rather than explaining the financial evidence involved. As a result, the focus shift from legal proof and technical details to public outrage and dramatic narratives.

This problem is considered to be more serious in economic and white-collar offence cases, where in these cases, reputation, professional credibility, market trust and institutional relationships are extremely important, and when the media repeatedly reports allegations in a dramatic manner, the accused may suffer irreparable reputational damage from the moment of arrest or investigation.

In criminal law, the principle of presumption of innocence means that a person is considered innocent until the prosecution proves guilt beyond a reasonable doubt, but the media reporting can cause people to judge and declare the accused guilty even before the trial ends, which automatically makes it difficult to differentiate the allegations from already proven facts. The issue is not that the media should stop reporting on economic offences, as reporting helps in maintaining transparency but the problem arises when reporting turns into prejudgment. Now this concern becomes more serious in cases where strict bail laws are applied as narratives created by the media can influence public opinion regarding bail decisions, and sometimes denial of bail is seen wrongly by assuming it as proof of guilt.

Therefore, media trials in economic offence cases should be understood in a broader legal context because these cases involve

<sup>32</sup> "Nikitha Suresh And Lucy Sara George, *Trial by Media: An Overview* 4 IJLMPH 267, 268-272 (2021)".

<sup>33</sup> "R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106".

<sup>34</sup> "Joann Elen Joe, *Trial by Media in India and Human Rights Implications: Legal and Social Consequences*, 5 IJIRL 918, 919-926".

complicated investigations, strict bail provisions, and serious reputational consequences. As a result, the accused may face difficulties, like losing their job, damaging their reputation or even losing freedom before they are proven guilty. Even when the law clearly mentions that a person is innocent until proven guilty, under media pressure and denial of bail, the accused will be treated as guilty.

### III. REPUTATIONAL HARM AS A PRE-TRIAL CONSEQUENCE.

Economic and white-collar offences are related with trust and credibility, and when allegations arise in cases like this, they can damage the accused person's reputation, career and public image in society even before any judgement is given by the court. There are times when media coverage have increased the damage due the narrative and assumptions presented in reports, which can very well influence public views on the accused without any consideration of whether the accused is convicted or acquitted later.

Even though the reputational harm is not seen as a formal legal punishment, but it can work like one, and when this reputational damage is combined with long pre-trial detention under the strict bail laws, the impact becomes even more serious as there is a possibility of losing both personal liberty and social status before being proven guilty. Therefore, the constitutional concern goes beyond the question of who has the burden of proof and the real issue is whether the legal system has the ability to protect the fundamental principle that a person is innocent until proven guilty.

### IV. BAIL AND THE BURDEN OF SUSPICION.

The constitution grants liberty before trial, as in traditional criminal law, bail is the rule and jail is the exception and bail is granted, unless the court thinks that there might be a clear risk that the accused may temper the evidence or influence the witnesses. But the scenario related to the economic offences is completely different, as in financial crimes, the statutes have introduced stricter bail conditions, and

these rules must be examined through the constitutional principles of presumption of innocence and right to personal liberty, which is embedded under Article 21.

Section 45 of the Prevention of Money Laundering Act 2002<sup>35</sup> is a stringent bail condition, and this section imposes twin conditions for bail where the court must be satisfied that there are reasonable grounds to believe that the accused is not guilty and that the accused is unlikely to commit any offence while on bail, which makes the bail harder to obtain. In the case of Nimesh Tarachand Shah v. Union of India<sup>36</sup>, the Supreme Court has initially struck down the twin conditions of Section 45 as unconstitutional, stating that the shift of the burden of proof on the accused during the bail stage weakens the presumption of innocence, but the amendments to the law have upheld the validity of Section 45 of the PMLA in the case of Vijay Madanlal Choudhary v. Union of India<sup>37</sup> emphasizing the seriousness of money laundering and its impact on the economic stability.

The economic offences are often lengthy and difficult in nature, making it a delay as it involves multiple jurisdictions, proper document analysis, and forensic accounting, taking a long time to complete the trials. And when strict bail laws combine with intensive media coverage, the situation gets complicated, as in the high-profile economic cases, the media attention is more, and when reporting about arrest and bail hearings is widely reported, they form strong opinions and, in such cases, bail decisions gain symbolic meaning in public discussion.

In the cases where financial crimes are related it can lead to serious harm in the economy and reduce public trust, so strong laws to deal with them are justified, but the main concern that remains is whether these strong laws weaken the basic principles of criminal justice, because if the pre-trial stage itself starts functioning like

<sup>35</sup> "The Prevention of Money Laundering Act, 2002, § 45, No. 15, Acts of Parliament, 2002 (India)".

<sup>36</sup> "Nimesh Tarachand Shah v. Union of India, (2018) 11 SCC 1".

<sup>37</sup> "Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1".

punishment, then the principle of presumption of innocence may lose its meaning. This problem does not arise from one single rule rather it comes from several factors, such as the strict bail conditions, long investigations and continuous media coverage that often suggest guilt before the court decides. In white-collar crime cases, the consequences of the action go beyond physical freedom as the allegations once made through media coverage damage trust, affect professional relationships, and harm the career even before the court reaches a conclusion, and when these consequences take place together, the line between accusation and actual punishment becomes weak.

The Constitution of India has not laid down rules that the media should stop reporting economic crimes, nor does it say that financial crimes are unimportant, but the general essence of reporting is to inform the public, not turn someone guilty before the court decides. Transparency is necessary but it should not become prejudgment and the protection of liberty remains meaningful in practice because if strict bail laws and media narratives are combined, they weaken the very basic principle of criminal law and the goal is to allow reporting, keeping the rights of the accused intact so that the presumption of innocence remains meaningful not just in theory but in practice too.

#### V. COMPARATIVE PERSPECTIVE.

Many countries have developed ways to control the harmful media publicity during trials. In the United Kingdom, laws like the contempt of court prevents publication of materials that may seriously prejudice the ongoing case<sup>38</sup>. Similarly, in the United States, the courts adopt methods like changing the trial location, isolating the juries to avoid bias and reduce the impact of pre-trial publicity<sup>39</sup>

In India, similar steps have been taken in the case of Sahara India Real Estate Corp. Ltd v.

SEBI, where the Supreme Court allowed the courts to issue postponement orders when media reporting creates the risk of real prejudice. India does not yet have a clear and consistent applied system to manage the media reporting in high-profile economic cases, like those adopted by other countries.

The comparison is to show that there must be some institutional safeguards that are necessary to protect the fairness of criminal trials in highly publicised cases.

#### SUGGESTION

To maintain the constitutional balance, the courts and authorities must ensure that the media reporting in economic offence cases remains factual and not assumptions and does not imply guilt before judicial determination. The bail decisions under the strict statutes such as the PMLA, 2002, should carefully consider the right to personal liberty where the cases involve prolonged pre-trial detention and at the same time the investigative agencies should adopt responsible communication practices so that the transparency does not turn into prejudgment and the presumption of innocence remains intact.

#### CONCLUSION.

Economic offences often receive strong attention from the public and media, and many of these cases are often governed by strict bail provisions under the PMLA. While transparency and strong enforcement are important to maintain public confidence, these actions must operate within the constitutional framework that protects personal liberty and the presumption of innocence. However, when there is continuous media coverage along with long pre-trial detention, the practical meaning of the principle “innocence until proven guilty” may be weakened and in such situations, the accused may face public judgment even before the court decides the case. Therefore, an important challenge for the criminal justice system is to ensure that this constitutional principle remains meaningful not only in law but also in practice.

<sup>38</sup> “Contempt of Court Act 1981, c. 49 (U.K.).”

<sup>39</sup> “Sheppard v. Maxwell, 384 U.S. 333 (1966).”