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## ETHICAL DILEMMAS IN CRIMINAL DEFENCE IN THE AGE OF MEDIA TRIALS

~ *Piha Birla*

### ABSTRACT

*In today's advanced times, criminal justice unfolds in full public view. Around the clock, new coverage, commentary on social media, and television panel debates shape the public view of guilt even before the first witness has been sworn in. In a democracy like ours, media scrutiny holds significant value. It keeps institutions under check and places accountability that a closed courtroom might otherwise avoid. But when this scrutiny transforms into a parallel trial, the costs upon criminal defence become severe. An accused, in a high-profile case, is frequently condemned in public discourse well before a court has begun the trial, which quietly erodes the constitutional "presumption of innocence". Defence lawyers find themselves caught in the middle, bound by professional duty to represent their client, while simultaneously being exposed to reputational damage, public hostility, and direct media pressure.*

*This paper discusses the ethical dilemmas that criminal defence lawyers face in such a hostile environment, reading them against constitutional doctrine, professional ethics rules, and the practical realities of Indian criminal litigation. It examines the tension between freedom of the press under Article 19(1)(a) and the right to a fair trial under Article 21, and also what the Advocates Act, 1961 and the Bar Council of India Rules actually require of advocates caught between these competing pressures. The central argument of the paper is that unchecked media sensationalism extends far beyond causing reputational harm to the accused. It harms procedural fairness, hampers public understanding of how criminal cases actually work, and places lawyers and courts under a form of pressure which the system was never designed to absorb.*

## INTRODUCTION

A criminal justice system earns its legitimacy through a fair procedure. The legitimacy of the system rests on impartial adjudication and constitutional fairness, rather than the verdict favoured by public opinion. However, the expansion of round-the-clock news channels and digital journalism has changed the way criminal investigations and trials reach the public. Especially in high-profile matters, tv debates and online commentary now arrive well before of any judicial finding. The direct effect of this is the normalisation of the presumption of guilt. This situation is described as a “Media Trial,” and it sits at one of the most controversial intersections of journalism, criminal justice, and legal ethics.<sup>1</sup>

India’s experience with this problem is not abstract. The rise of 24-hour news and the parallel growth of social media have brought several criminal cases closer to public spectacle. The Jessica Lal murder case, the Aarushi Talwar investigation, and the death of Sushant Singh Rajput are each illustrations of how a media narrative can overtake legal proceedings in the public perception, to the point that the actual trial can start to feel secondary.<sup>2</sup> It is not in dispute that investigative journalism has a genuine and important role in exposing institutional failure. But the difficulty rises when sensational coverage tends to bypass the presumption of innocence altogether, and in doing so it reshapes the ethical space in which defence lawyers operate.<sup>3</sup>

Criminal defence occupies an unusual position within the legal profession. An advocate is both ethically and constitutionally bound to represent an accused person regardless of how that person is regarded by the public. The lawyer’s duty is not to judge a client’s moral innocence but to hold the prosecution to the burden of proof that the law demands. However, in the current media environment, lawyers who take on unpopular or widely vilified clients are increasingly portrayed not as officers of the court but as accomplices, as though representation itself amounts to an endorsement.<sup>4</sup>

That mischaracterisation is where the difficulty begins. A defence lawyer has to hold loyalty to the client with a candour towards the court, while also absorbing reputational attacks, public hostility, and constant media attention. The problem worsens when press coverage starts to

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<sup>1</sup>Monica Madaan & Arryan Mohanty, *Media on Trial: Examining the Legal and Ethical Dimensions of Media Trials*, 5 Int’l J. L., Just. & Jurisprudence 293 (2025).

<sup>2</sup>Sidhartha Vashisht v. State (NCT of Delhi), (2010) 6 SCC 1.

<sup>3</sup>Nallamuniappan N. et al., *An In-Depth Analysis of the Effects of Media Trials on Criminal Justice Administration*, 10 IJRTI 443 (2025).

<sup>4</sup>Sommya Kashyap, *The Ethical Dilemma of Defending the Guilty: Indian Legal Framework* (2025).

shape the behaviour of witnesses and investigating agencies while a case is still pending. In effect, the advocate's ethics are tested twice, once inside the courtroom, and once in a far less structured forum i.e. public opinion.

## CONCEPTUAL FRAMEWORK OF CRIMINAL DEFENCE ETHICS

Criminal proceedings are inherently adversarial in nature. Within this structure, the defence lawyer performs a function that is not merely professional but rather constitutional in nature. They ensure that the accused is meaningfully and fearlessly represented and that the prosecution's case is tested rigorously. A fair trial cannot exist on paper alone. It depends on the accused having a real and competent advocate to represent them, because the legitimacy of any conviction rests on the actual conduct of an adversarial contest.<sup>5</sup>

Articles 21 and 22(1) of the Constitution together secure this procedural fairness by guaranteeing an accused person's right to consult and be defended by a legal practitioner of their choice.<sup>6</sup> The Supreme Court has said multiple times that legal representation is not merely a courtesy extended to the accused but an indispensable feature of fair trial jurisprudence.<sup>7</sup> Criminal defence lawyers, in that sense, are not simply private agents acting for a fee but participants in the administration of justice itself.

Professional conduct for Indian advocates is governed chiefly by the Advocates Act, 1961 and the Bar Council of India Rules, which impose two obligations running in entirely different directions, i.e. "a duty to the client", and "a duty to the court". An advocate is expected to defend the client's interests with zeal, but within hard limits; it cannot extend to fabricating evidence, misleading the court, or otherwise abusing judicial process.<sup>8</sup>

Among the more contested principles in this area is the "cab-rank rule," under which a lawyer is expected to take on clients without regard to personal views about guilt or moral character. The reasoning behind the rule is that every accused person is entitled to competent representation, and if lawyers began refusing unpopular clients, the presumption of innocence would collapse in practice even while surviving in theory. Ultimately, criminal justice starts running on public morality rather than true evidence.<sup>9</sup>

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<sup>5</sup>Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.

<sup>6</sup>INDIA CONST. arts. 21, 22.

<sup>7</sup>Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

<sup>8</sup>Bar Council of India Rules, Part VI, Ch. II.

<sup>9</sup>Jonathan Herring, Legal Ethics 112 (Oxford Univ. Press 2014).

In practice, defence lawyers face real conflicts of conscience. A lawyer may personally doubt the client's innocence but still be professionally obligated to question the prosecution's case at every step. Or an advocate may suspect that a client intends to give false testimony or fabricated evidence, which forces a difficult balance between the duty of confidentiality and the duty owed to the court.<sup>10</sup> There is no clear formula for resolving this issue, and it is to be worked out case by case, mostly through professional judgment.

What emerges out of this is a careful balance. The defence lawyer is neither the moral police of the client's conduct nor an active participant in it. The advocate instead stands as a constitutional check against arbitrary conviction and procedural unfairness. Media trials sometimes disturb that balance when they turn criminal proceedings into contests of public morality, in which the very act of providing a defence becomes suspicious.

## **MEDIA TRIALS AND THE TRANSFORMATION OF CRIMINAL JUSTICE**

"Media trial" refers to the process by which media outlets shape public judgment about an accused person's guilt or innocence before any court ruling. It differs from ordinary reporting in multiple ways like speculative commentary substitutes confirmed facts, coverage is often sensationalised for more effect, evidence is disclosed selectively, and panel debates run alongside under-process investigations.<sup>11</sup>

The popularity of media trials have a lot to do with the commercial pressure that the Indian television news channels are put under. Channels often compete for viewers through emotional reporting, dramatic visuals, continuous debate segments, and criminal proceedings end up becoming entertainment content rather than a matter awaiting legal resolution. In this process, the accused is often declared guilty from the outset, well before any evidence has been assessed.

The Supreme Court has repeatedly flagged this situation. In the case of *Sidhartha Vashisht v. State (NCT of Delhi)*, the Court warned that a media trial risks destroying the presumption of innocence and interferes with the conduct of a fair investigation.<sup>12</sup> A similar concern appeared in the case of *State of Maharashtra v. Rajendra Jawanmal Gandhi*, where the Court stated that a trial by press poses a genuine threat to procedural fairness, since judges and witnesses may unknowingly get influenced by prevailing public sentiment.<sup>13</sup>

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<sup>10</sup>Andrew Boon, *Lawyers' Ethics and Professional Responsibility* 93 (2015).

<sup>11</sup>Madaan & Mohanty, *supra* note 1.

<sup>12</sup>*Sidhartha Vashisht v. State (NCT of Delhi)*, AIR 2010 SC 2352.

<sup>13</sup>*State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386.

Media trials distort criminal proceedings in several ways at once. Speculative or incomplete information gets presented to the public as settled fact. Investigating agencies come under indirect pressure to bring their conduct in line with whatever narrative has taken hold. Sometimes the witnesses alter their testimony out of exposure to public or fear of backlash. And in exceptionally high-profile cases, even judicial independence can come under pressure of influence.<sup>14</sup>

Social media has made all of this significantly harder to contain. Unlike a media house, a social media platform has no editorial board. Influencers, commentators, and anonymous accounts can comment and shape opinions without any restriction. Hashtag campaigns brand accused persons as criminals before trial. In multiple recent cases, these online accounts circulate edited videos, leaked details from ongoing proceedings, and formulate speculative theories that falsely shape the public perception.<sup>15</sup>

Defence lawyers are far from immunity from any of this. Advocates who represent unpopular clients often face online harassment, reputational attacks, and moral condemnation that has nothing to do with their merit. Instead of being understood as a guardian of constitutional rights, a defence lawyer is often treated as an obstacle standing in the way of real justice. This kind of hostility corrodes the independence of criminal advocacy and, over time weakens the very foundation the adversarial system stands on.

Freedom of the press remains an important part of democracy. But unrestrained sensationalism is an entirely different matter, and the line of distinction between informative journalism and prejudicial commentary is a pressing ethical question in contemporary legal discourse.

## **ETHICAL DILEMMAS FACED BY CRIMINAL DEFENCE LAWYERS**

Criminal defence lawyers work within an environment that is inherently difficult, because their professional obligations consistently collide with public morality, institutional pressure, and whatever narrative the media has decided. These conflicts are strongest in high-profile cases, where public opinion is often shaped by sensational reporting rather than on evidence presented in court.

The most basic dilemma relates to the defence of “socially condemned” accused. Lawyers representing individuals charged with terrorism, sexual offences, crimes against children, or

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<sup>14</sup>R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106.

<sup>15</sup>Nallamuniappan N. et al., supra note 3.

other serious violent crimes constantly face public hostility for doing nothing more than their job. These advocates are sometimes accused of lacking morality, or even of indirectly supporting the alleged conduct, simply because they chose to appear for such clients.<sup>16</sup> This reaction misreads what defence advocacy is actually for. The lawyer's role is not to certify the client's moral character but to guarantee fairness of procedural and to act as a guard against wrongful conviction. This difference gets lost fairly easily in public commentary.

Secondly, a quite different dilemma that sits in the space between loyalty to the client and candour toward the court, is that the defence lawyers are duty bound to keep client communications confidential. But situations do arise in which counsel suspects that a client intends to offer false testimony or tamper evidence. An advocate cannot knowingly facilitate perjury, but breaching the confidentiality requirement to prevent it would violate their professional duty.<sup>17</sup> Navigating between this conflict requires a level of ethical judgment that no rulebook fully addresses.

Media trials exaggerate this conflict, because lawyers now operate inside a prejudicial atmosphere in which the very act of representation draws scrutiny of public. Some advocates hold back from legitimate legal strategies simply out of fear that media coverage will question them. For example, cross-examining a vulnerable witness may be necessary as a matter of law, yet it can be publicly portrayed as insensitive or unethical. In such situations the lawyers change the otherwise genuine defence strategies just to avoid a public backlash that they cannot control.<sup>18</sup>

The dilemma becomes even more severe when coverage builds an impression that acquittal itself would amount to an injustice, as though the outcome of a case were already declared by public sentiment and the trial is a mere formality standing in its way. In this environment, defence lawyers absorb pressure that has nothing to do with the law. A related and increasingly common issue is how lawyers engage with the media directly. High-profile cases now involve regular media coverage to increase TRP and conduct televised debate segments in which advocates discuss pending matters.

Regulated public communication may genuinely serve the client's interests, but excessive media engagement risks compromising professional dignity and, in the worst cases, prejudicing

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<sup>16</sup>Kashyap, *supra* note 4.

<sup>17</sup>Bar Council of India Rules, Part VI, Ch. II.

<sup>18</sup>Herring, *supra* note 9.

the proceeding itself.<sup>19</sup> The Bar Council of India Rules discourage solicitation and sensational self-promotion, yet the incentives of digital media culture run in the opposite direction, rewarding exactly the kind of performative commentary the rules were meant to discourage. There is also a personal cost such advocacy. Online abuse, threats, reputational damage, and a degree of social isolation have become fairly ordinary features of practising criminal defence in controversial cases. Particularly, younger advocates may think twice before entering this area of practice at all, simply because of the stigma attached to it. This hesitation is more severe than it may appear on the face. It thins out the pool of lawyers willing to take on difficult cases, and in doing so it quietly undercuts the constitutional promise of a fair trial.

An adversarial system can function healthily only if its advocates are willing to argue fearlessly and independently. Once defence lawyers start calibrating their legal strategy to public opinion rather than to constitutional principle, the system loses its very foundation i.e. neutrality. Ethical criminal defence is not merely a legal skill, but requires the willingness to hold a procedurally fair line even when the accused is, by any measure, deeply unpopular.

## CONSTITUTIONAL DIMENSIONS: FAIR TRIAL VERSUS FREEDOM OF PRESS

Behind the conflict between media trials and defence ethics lies a broader constitutional tension between the freedom of speech and the right to a fair trial. Article 19(1)(a) guarantees freedom of speech and expression. It extends to freedom of the press as well. Article 21 guarantees the fundamental right to protection of life and personal liberty. Judicial interpretation has extended it to include the right to a fair trial.<sup>20</sup> But neither of these rights is unqualified. Article 19(2) allows reasonable restrictions on speech where necessary to protect against contempt of court, preserve public order, or safeguard the administration of justice. Subsequently, media freedom cannot be extended to cover such conduct that actively prejudices a pending criminal proceeding or undermines procedural fairness.<sup>21</sup>

The Supreme Court, in *Sahara India Real Estate Corp. Ltd. v. SEBI*, recognised and used the power of courts to issue postponement orders where it becomes necessary to prevent prejudicial reporting during a pending case.<sup>22</sup> The Court reasoned that unrestricted publication of sensitive

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<sup>19</sup>Id.

<sup>20</sup>INDIA CONST. arts. 19(1)(a), 21.

<sup>21</sup>INDIA CONST. art. 19(2).

<sup>22</sup>*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

material could compromise the fairness of adjudication, and that limited restrictions on media broadcast were therefore justified in appropriate circumstances.

Further, in the case of *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers* a similar conclusion was reached upon from a different angle. Here the court held freedom of the press has to coexist with the administration of justice, and it cannot be permitted to prejudicially interfere with proceedings that are still pending.<sup>23</sup> Read together, these judgments treat procedural fairness as a constitutional value on equal footing with freedom of press and not simply overridden by it.

Enforcement in practice is an entirely different story. Indian media regulation relies heavily on self-regulatory mechanisms with fairly limited teeth, which means sensational coverage often runs unchecked until real prejudice has already set in. By this point a postponement order or judicial caution does relatively little good. Social media further compounds the problem, since online platforms allow speculative narratives to spread at a pace which cannot be matched by institutional regulation.

The constitutional challenge then becomes to preserve democratic transparency without letting judicial adjudication be substituted by public opinion. A fair trial depends on guilt being determined through evidence tested in accordance to law, and not via a narrative built by press. Criminal defence lawyers sit at the center of this balance, since it is their advocacy that functions as the day-to-day safeguard against prejudicial conviction.

## REFORMATIVE SUGGESTIONS

The increase of media trials calls for reforms aimed at two levels: first, protecting the integrity of criminal adjudication, and secondly, protecting the lawyers who practise ethical criminal defence.

Media reporting on ongoing criminal matters needs to be regulated. Coverage should be restricted to stating proved facts rather than speculative statements. Further, outlets that disclose unverified investigative material should face meaningful consequences rather than nominal questioning. The Bar Council of India should draft comprehensive guidance framework on how advocates engage with media platforms. This guidance should cover

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<sup>23</sup>*Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers*, (1988) 4 SCC 592.

televised debate, social media commentary, and digital publicity related to matters still before a court.

The courts should also target these issues by actively using postponement orders in exceptionally sensitive cases where publicity can be a threat to procedural fairness. Intervening at preliminary stages of a case is far more effective than trying to undo prejudice after it has already taken hold. Furthermore, digital platforms should be mandated to use working mechanisms such as auto-detection and deletion of such content, to restrict the spread of manipulated evidence, defamatory content, and speculative narratives.

Finally, the legal education should include specific training on ethical advocacy in sensitive litigation. Lawyers entering criminal practice need to be prepared to withstand public hostility without compromising their professional independence. Institutional support structures should exist for defence lawyers who face harassment and reputational attack for representing unpopular clients such that it does not end up eroding the constitutional guarantee of a fair trial.

## **CONCLUSION**

Criminal defence advocacy is one of the most essential safeguards a constitutional democracy has. It is the mechanism by which conviction follows a lawful procedure rather than public vengeance dressed up as justice. The increasing rise of media trials has made the ethical functioning of defence advocacy harder to navigate. Sensational coverage, digital outrage, and public outburst, throws out the presumption of innocence and places pressure on defence advocates that the adversarial system was not built to withstand. When defence becomes socially stigmatised, criminal justice drifts away from being a rule-based and starts to resemble a morality play with a predetermined ending. The constitutional mandate of a fair trial cannot survive in an environment where guilt is pre-decided in public before court's ruling. Freedom of press remains indispensable but accountability is not a licence for prejudicial adjudication conducted through tv panels and social media threads. The real challenge is setting a framework where journalistic freedom and procedural fairness can coexist. In the end, the legitimacy of criminal justice rests not on how popular its outcomes are but on how sound the process is. A society that takes constitutional morality seriously has to protect every accused's right to fearless and independent legal representation.