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THE PRESUMPTION OF INNOCENCE IN THE AGE OF THE MEDIA TRIAL

~ Rudrali Deshpande

ABSTARCT

The thought about innocence comes from the vagueness principle, which states the notion of innocence until guilt is proven through lawful judgment. The workload of the matter is vast; this probably comes from the fact that it is codified across many charters of law, i.e. provisions of the Universal Declaration of Human Rights, Blackstone's Commentaries, and moral traditions established in virtually every democratic government of the world. In trying to settle the problem of the innocence presumption norm, the authors analyse the concept of media trial. The principle is somewhat challenged by the fact that the modern press creates a negative verdict for the perpetrator far before the court judgment has been delivered. Relevant legal theory is joined by relevant examples from the cases of Indian, American, and English traditions, as well as by reference to numerous statistics from the area of judicial psychology. The prison system features the fact that the majority of detainees in both the USA and India are people who have not been convicted at any point, whereas in the exoneration records, the same reasons lead to miscarriage of justice, such as wrongful accusations and confirmation bias. The figures below are taken from the relevant peer-reviewed articles and statistics from government sources.

Keywords: Presumption of Innocence; Media Trial; Fair Trial; Wrongful Convictions; Confirmation Bias; Judicial Psychology.

1. INTRODUCTION

As quoted by William Blackstone in 1769, “It is better that ten guilty persons escape than that one innocent suffer”, which expresses a principle that existed long before that time and is valid

in nearly all legal systems in the world¹. According to the presumption of innocence, proving guilt is completely the responsibility of the state, while the law does not impose the same burden on the person accused of a crime, meaning he can be treated as innocent in a legal sense and outside the legal system until the guilty verdict is made by the competent court. Lord Sankey's statement, made as part of the case *Woolmington v. DPP*² is the most popular definition of this principle and describes it as the thread going through the whole of English criminal law.

This paper aims to examine “media trial” by understanding it through the lens of press and broadcast coverage that renders a public judgement regarding the guilt of an accused before the courts actually get a chance to analyse the case through adequate judicial proceedings; in the current scenario, this has become a structural challenge to the presumption of innocence rather than an occasional embarrassment to it. The methodology applied is a combination of doctrinal analysis and quantitative evidence: it aims to draw on experimental psychology to show how pretrial publicity can measurably affect juror behaviour, government statistics on how many people are detained without convictions in two major jurisdictions and exoneration data to show the scale of the problem, rather than treating the tension between press freedom and fair trial as a purely normative debate.

The paper comprises six parts. The second section elaborates on the legal definition of the principle of presumption of innocence applied in the international legal sphere, U.S. law, Anglo-Saxon law and Indian law. The third section states the evolution of media trial from its beginning in print media to the present time. The fourth section contains the strongest experimental evidence, namely the body of research on pretrial publicity, supporting that media has an impact on court decisions and not just on public opinion. The fifth section elaborates on wrongful convictions, showing that the facts that were present in media trials explain the occurrence of mistakes in the justice system. The sixth section studies pretrial detention, which is another aspect of presumption of innocence; this section presents comparative data on this process in the U.S. and India. The seventh section overviews the actions taken to protect the presumption of innocence and the eighth section presents the scope of its application in reality, while in the ninth section conclusions are drawn.

¹William Blackstone, Commentaries on the Laws of England, bk. IV, ch. 27 (1769).

²*Woolmington v. DPP*, [1935] AC 462, 481-82 (HL) (Viscount Sankey).

2. DOCTRINAL FOUNDATIONS

The theory of innocence assumes its presence at the international level in Article 11(1) of the UN Declaration of Human Rights as well as Article 14(2) of the International Covenant of Civil and Political Rights, which covers the right of every person charged with a crime to be presumed innocent until proven guilty.³ Article 6(2) states that the same rule is also respected by the European Convention on Human Rights.

As far as the common law of England is concerned, the presumption was first implied in the ruling in *Woolmington v. DPP*, in which case the House of Lords said that the prosecution is to be in charge of proving the defendant's guilt and cannot change this position on any conditions.⁴ As far as United States law is concerned, the same principle is guaranteed by the rule of due process, according to which the presumption was accepted as significant evidence in favour of the accused individual in *Coffin v. United States*.⁵

Although there is no direct mention of presumption of innocence in the Indian Constitution, the Supreme Court has interpreted it as a part of Article 21 assuring personal liberty, establishing in the case of *Kali Ram v. State of Himachal Pradesh*⁶ that the presumption of innocence is an elementary principle of criminal law, implying that the burden of proving guilt beyond reasonable doubt rests with the prosecution and presumption of innocence is in place until one is proved guilty. Another constitutional clause is Article 20(3) that bans self-incrimination, thus reinforcing the general rule concerning the burden of proof.

What is common to these formulations is a common mechanism: they are obligatory for courts and certain executive bodies (such as police and the prosecutor's office) but were not made to bind the media, society or, especially, the anonymous audience.

3. THE MEDIA TRIAL: FROM PRINT TO ALGORITHMIC AMPLIFICATION

"Media trial" or "newspaper trial" is not a fresh complaint; it is an entity at least as old as mass circulation journalism. What is more recent is its recognition by the judiciary as a body that can take over the trial's own process of ascertaining facts. The most definitive case is that of

³Universal Declaration of Human Rights, art. 11(1); International Covenant on Civil and Political Rights, art. 14(2).

⁴*Woolmington v. DPP*, [1935] AC 462 (HL).

⁵*Coffin v. United States*, 156 U.S. 432, 453 (1895).

⁶*Kali Ram v. State of Himachal Pradesh*, AIR 1973 SC 2773.

Sheppard v. Maxwell of the U.S. Supreme Court, which overturned a conviction on the grounds that the trial took place in a condition described by the Supreme Court as “carnival atmosphere.” Reporters and cameramen were everywhere, and the jury was never shielded from the excessive media coverage. The Supreme Court concluded that the trial court should have established stricter rules to prevent the “excessive pretrial publicity.”⁷ Another similar case is *Irvin v. Dowd*, where the court annulled the verdict on the basis of pretrial publicity making it impossible to form an unbiased jury, emphasising that the defendant should have an impartial jury called into question whether the jurors promised not to be biased.⁸

In these situations, it is clearly stated that the findings of sociological and psychological studies were confirmed later on, namely, the coverage by the media of the case that is on trial can significantly prevent the truth-seeking process. Social media did not cause this issue, however, it continued to be aggravated in three aspects that are mentioned in the research of digital vigilantism: change of passiveness of the audience into its active role in the creation of the news, shortening of the news cycle from days to minutes and broadening the notion of the “trial” to those actions that are not considered as crimes at all.⁹ With the presentation of media trials in the period of time when television was the main medium controlling the process, it was easy to track who the editor was who had some information and made some judgments in a way that was not perfect.

4. QUANTITATIVE EVIDENCE

The most direct empirical evidence showing that mass media coverage goes beyond just being an influencing factor and plays a crucial role in determining an individual's perception of guilt has come from research conducted in experimental psychology regarding pretrial publicity (PTP). According to Steblay et al. (2014), who conducted a meta-analysis involving 44 studies and a total of 5,755 participants, the odds of participants judging a defendant as guilty after being submitted to negative pretrial publicity were significantly higher than those of those participants who had experienced less negative publicity, with approximately 59% of participants exposed to PTP responding 'guilty' compared to only 45% of participants in control

⁷Sheppard v. Maxwell, 384 U.S. 333, 358 (1966).

⁸Irvin v. Dowd, 366 U.S. 717, 728 (1961).

⁹Cf. Daniel Trottier, Digital Vigilantism as Weaponisation of Visibility, 30 Phil. & Tech. 55 (2017), discussing the companion phenomenon of networked, participatory punishment.

conditions, the resultant mean effect size being $r = .16$ and increasing further in studies reproducing actual experiments in real-life scenarios (i.e. real PTP context, pool of potential jurors, longer time interval between gaining PTP and issuing a verdict).¹⁰

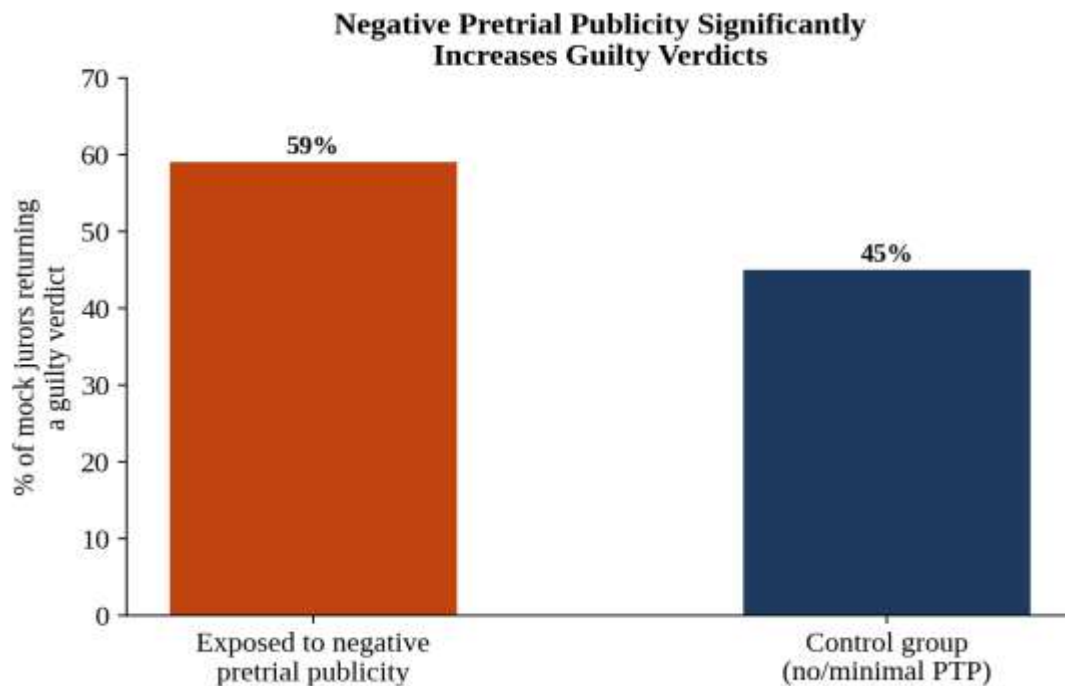


Figure 1: Negative pretrial publicity significantly increases guilty verdicts

An accompanying meta-analysis updating and extending the findings of the Steblay et al. study affirmed the principal finding and discovered that positive publicity impacts the jury verdict in the same way as negative publicity, where positive press would lessen the chance of a conviction and make jurors think more highly about a defendant.¹¹ The given research therefore contradicts the assumption relied upon in many contempt of court theories: that jury instructions to ignore outside influences or the fact that time has passed since the publicity has been received removes any prejudicial influence of such publicity. In reality, the studies have demonstrated that the influence grows with the time distance.¹²

5. WRONGFUL CONVICTIONS

If it is evident from scientific studies that pretrial publicity has a significant impact on the verdict in a particular case, the exoneration statistics testify to the effects too. This information

¹⁰Steblay, N. M., Besirevic, J., Fulero, S. M., & Jimenez-Lorente, B., The Effects of Pretrial Publicity on Juror Verdicts: A Meta-Analytic Review, 23 Law & Hum. Behav. 219 (1999).

¹¹Devine, D. J., & Caughlin, D. E., The Impact of Pretrial Publicity on Jury Verdicts: A Meta-Analytic Review, 20 Psychol. Pub. Pol'y & L. 109 (2014).

¹²Steblay et al., supra note 10

can be highlighted in the 2024 Annual Report of the National Registry of Exonerations, which provides the results: 147 individuals in the USA were found innocent (the total number of exonerations since 1989 is 3,646 exonerations) and spent 13.5 years, on average, in prison wrongfully.¹³ The report states what factors contributed to wrongful convictions: perjury and false accusations - 72%, government misconduct - 71%, inadequate legal assistance - 33%, false or misleading evidence - 29%, mistaken identification of a witness - 26%, and false confession - 15%.¹⁴

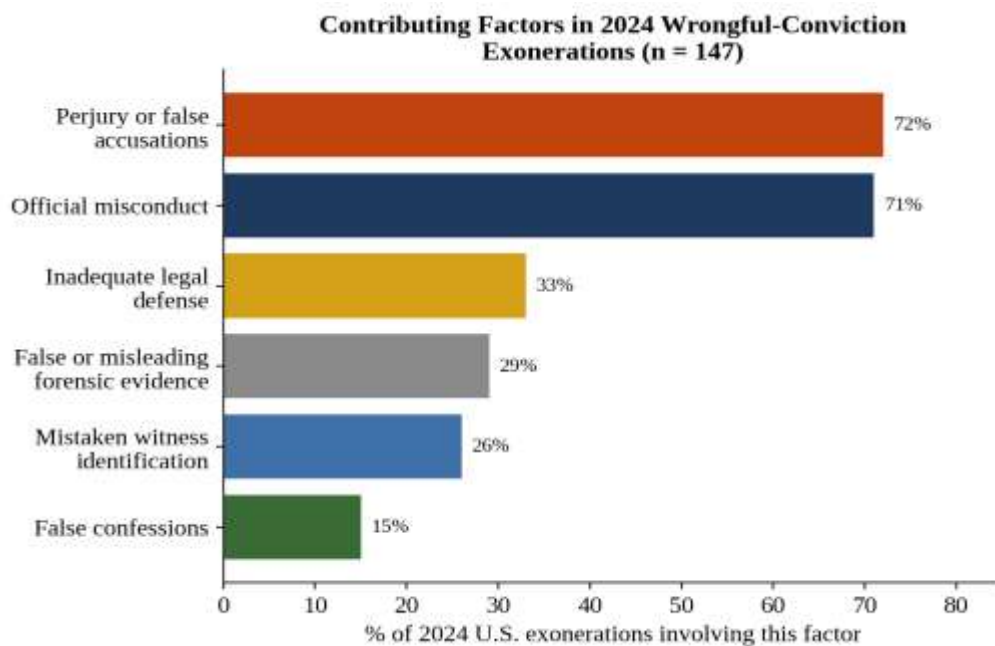


Figure 2: Contributing factors in 2024 wrongful-conviction exonerations

The factors mentioned above do not fall under the category of “media coverage,” although the literature on wrongful convictions has established a link between them and media trials: the pressure to find and punish the criminal, which is created and transmitted by media trials, is linked to tunnel vision during investigations, which has been established as one of the causes of police misconduct and unreliable eyewitness and forensic evidence.¹⁵ Furthermore, the 2024 statistics also suggest the existence of a continuing racial gap, with people of colour constituting around 85% of all wrongly convicted individuals, which corresponds to the data from previous years collected by the Registry and supports the argument made in the next section concerning the effect of pretrial detention.¹⁶

¹³National Registry of Exonerations, 2024 Annual Report 2–3 (Apr. 1, 2025).

¹⁴Id. at 5–7.

¹⁵Id. at 4; see also National Registry of Exonerations, Race and Wrongful Convictions (2022).

¹⁶National Registry of Exonerations, 2024 Annual Report, *supra* note 13, at 8.

6. THE PRETRIAL DETENTION PARADOX

A separate but related variation of the presumption of innocence is pretrial detention, where a suspect is imprisoned although they have not yet been convicted of any crime. According to statistics from the USA Bureau of Justice, as of June 2023, 70% of the total jail population of the U.S. (467,600 persons) consists of people who technically have not yet "been convicted" in a court of law, with 30% making up persons who have been convicted, having either completed their sentence or awaiting sentencing.¹⁷ The number presented is a dynamic indicator: the Vera Institute of Justice registered an increase in the pre-trial population in U.S. jails from 53% in 1970 to 64% in 2015, while the absolute number of inmates involved in pre-trial detention increased over that period of time by 433%, mainly due to the implementation of a bail system for less affluent individuals.¹⁸

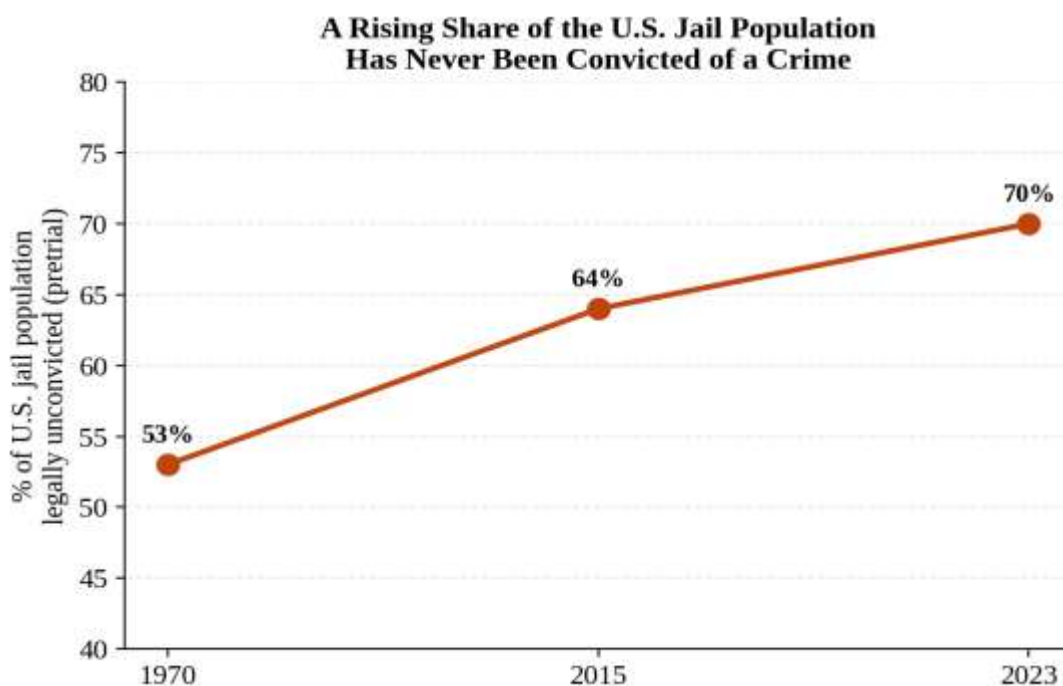


Figure 3: A rising share of the U.S. jail population has never been convicted of a crime

The data from India showcase a data set which most likely bears resemblance to a similar pattern which, however, is worse. The annual Prison Statistics India report, prepared by the National Crime Records Bureau in India, states that 75.8 percent of the inmates of the prisons are undertrial prisoners who represent 434,302 of their total number of 573,220 inmates, and out of those undertrial prisoners around 8.6 percent of them stayed in the prison without any

¹⁷U.S. Bureau of Justice Statistics, Jail Inmates in 2023-Statistical Tables 1 (2024).

¹⁸Vera Institute of Justice, Justice Denied: The Harmful and Lasting Effects of Pretrial Detention 2-3 (2019).

conviction for more than three years. According to the data, most of the undertrial prisoners were drawn from Scheduled Castes, Scheduled Tribes, and Other Backward Classes groups.¹⁹

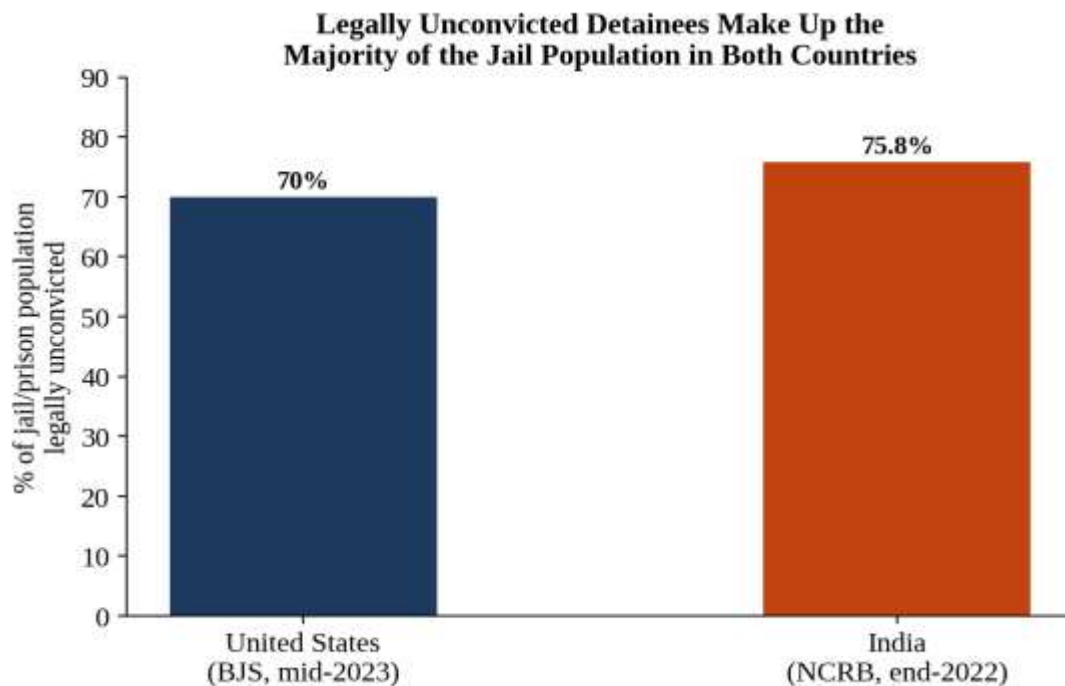


Figure 4: Legally unconvicted detainees make up the majority of the jail population in both countries

This data has clear doctrinal significance: the usual workings of the criminal justice system itself, regardless of media reports, place the presumption of innocence under difficulty and stress since pre-trial detention is possibly the highest measure the government can apply in any situation, yet it is given to many people before any determination of the presumption takes place. Media trials contribute to the profound impact created by this fact, not creating it from scratch. Moreover, it is shown that cases that received media publicity have the potential of decreasing chances of possible grant of bail, since jurors, magistrate and judges are also dependent on public reactions in this situation.²⁰

7. LEGAL SAFEGUARDS AND THEIR LIMITS

The existence of a body of law shows that legal systems were not oblivious to the conflicts that may arise from freedom of the press and the presumption of innocence, although the regulations

¹⁹National Crime Records Bureau (India), Prison Statistics India 2022, at 12-14 (2023).

²⁰Cf. Greer, C., & McLaughlin, E., Trial by Media: Policing, the 24-7 News Mediasphere and the "Politics of Outrage," 26 Theoretical Criminology 84 (2022).

were devised for media trials involving publishers and the courts rather than a wider, decentralised, and interconnected media.

For instance, the Indian Contempt of Courts Act, 1971 allows the court to penalise publications that harm ongoing proceedings, and in *Sahara India Real Estate Corp. Ltd. v. SEBI*, it had pronounced the "doctrine of postponement", which allows the imposition of a temporary restriction on prejudicial publication, establishing the right equilibrium between the free-press guarantee enshrined in Article 19(1)(a) and the right to a fair trial of Article 21.²¹ In the UK, the Contempt of Court Act 1981 has a similar scheme of strict liability starting from the moment the proceedings commence.²² The United States has adopted a much more liberal approach, as the Supreme Court in *Nebraska Press Association v. Stuart* ruled that prior restraints on trial coverage are presumed unconstitutional, leaving the protection of the right to a fair trial to means used during the trial, while publications are not restricted.²³

In the past, all of the principles spoke about a specific publisher as well as a law case at its beginning that is typical for a media case of the past century. None of the principles talks about a situation where the publisher becomes a large number of unknown users of social media, nor where a person who is suffering from public judgment has never been accused of anything and cannot therefore be subject to contempt principles that are only applicable when the case is active. Therefore, the solutions discussed here concern the central idea of the problem, that is, journalism interfering with the ongoing case. However, the principles say nothing about the new case when the prosecution can be considered non-existent.²⁴

8. AN ORIGINAL ARGUMENT: THE PRESUMPTION OF INNOCENCE OPERATES IN TWO TIERS, NOT ONE

Sections 4 to 6 have considered the deterioration of the presumption of innocence as one process with two symptoms. However, reading together the own data of this paper suggests a more complicated and alarming proposition that media trial and pre-trial detention are not two symptoms of the same phenomenon but two distinct populations suffering from

²¹*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

²²Contempt of Court Act 1981 (U.K.).

²³*Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976).

²⁴Cf. Trotter, *supra* note 9; Shreya Singhal v. Union of India, AIR 2015 SC 1523.

opposite violations of the same rule, stratified, in effect, by precisely the type of resource for which the presumption of innocence was intended to be significant.

Identification should be made as to those who undergo “trial by media” in the context considered in Sections 3 and 4; only those defendants who receive media attention and news coverage that transcends their time in court. Though these kinds of defendants are very few in number, they invariably belong to the group of people with particular means to mitigate the problems that might arise: lawyers who can change the place of the trial, manage to present a different version of the events, and frequently enjoy the possibility of paying bail before the beginning of the trial instead of staying in jail and watching the news coverage passively.

The group of individuals who are actually stripped of their right to freedom as a result of an unfounded allegation, namely, the 70% of Americans jailed and the 75.8% of those imprisoned in India that we discussed in Section 6, represents the opposite group; the members of this group are either unable to post bail or receive little to no attention in the media, and thus are not subject to the same rules that prevent the presumption of guilt from being affected by the media coverage. The presumption of guilt can only be compromised if the defendant’s case has been covered in the media; if there has been no media coverage of the case and it has not been publicised at all, the change of venue motion cannot be filed.

The concept can be described as the inverted-visibility paradox: the diminishing of the presumption of innocence that is widely discussed in jurisprudence is the diminishment of the small number of people, while the diminishing of the many occurs below the level of visibility that will make it possible to implement any of the measures discussed in this paper. Most importantly, financial power offers not only a better representation at trial as traditionally understood; it allows achieving the necessary visibility level for the presumption of innocence to materialise. Thus, financial hardship does not lead to a worse representation but rather excludes the defendant from the media trial paradigm altogether while allowing for pretrial detention to exist as an efficient presumption of guilt despite its legal nonrecognition.

There will be an additional connected asymmetry: that of permanence. In the case when a defendant is acquitted, legal innocence occurs instantly with the verdict. However, the

media report about the charge will continue to exist forever, and be much easier to find than the acquittal itself. In this case, legal innocence is established only once based on law, while reputational suspicion continues to persist in time without limits. On the other hand, people covered by the media and being on trial will experience the opposite type of injustice: their loss will be invisible and will remain so even after being released from imprisonment.

9. LIMITATIONS

This paper's quantitative evidence largely originates from American and Indian sources, and the pretrial publicity experimental literature largely comes from the North American region. The major meta-analysis, which applies to courts with differing jury systems, was not found. Similar information from courts using either means of jury systems was not found on account of the fact that, after the K.M. Nanavati case, jury trials were abolished in India, thus meaning that there is no proper literature on juror bias in India, despite all the judges encountering the same psychological mechanisms. The wrongful conviction data was derived solely from the cases of actual wrongful convictions in the USA. Since all exonerations require plenty of legal resources, it can be inferred that actual instances of wrongful conviction are underreported. There are no specific numbers available for other countries, including India and the UK. Finally, pretrial publicity as well as pretrial detention are analysed in this paper, but they are treated as related but different forms of breach of the presumption of innocence. Once again, no primary data were available to investigate the interplay of the two.

10. CONCLUSION

The presumption of innocence is not simply undermined figuratively; all the evidence provided in this paper indicates definite and observed strain on the presumption of innocence in every stage of its operation. Experimental studies show that publicity before the trial has shifting verdicts of jurors in significantly replicable manner. Exoneration statistics indicate that institutional pressures implied by media trials (the need to name the suspect, to resolve the case, satisfy public demand for a decision, etc.) are confirmed causes of wrongful convictions. Data about detainees in two of the biggest democracies in the world prove that most of the people currently in detention are in custody without any

charges against them, which indicates that presumption has already faced difficulties before any press information has been provided regarding any particular case. Legal doctrines of contempt of court or prior restraint have already considered only one narrow version of the problem involving the publisher and docketed case, while the number of those trials that happen outside that scope is continuously growing.

As Section 8 asserts, the attention paid to the risks of media trials discussed in this paper, in effect, mirrors the same imbalance identified earlier: while the process of eroding the presumption of innocence through media coverage is visible, litigated, and well studied due to the publicly accessible cases of defendants who warrant media coverage, the other, much larger process of erosion that involves hundreds of thousands of individuals who are imprisoned without any press coverage is taking place under the radar and does not trigger any legal or academic attention. Hence, addressing the problem identified in this paper will necessitate a combination of doctrinal and empirical approaches towards the silent majority of cases rather than towards the vocal minority, and get rid of the misconception that the presumption of innocence is a simple court formality.