

Chapter – IX

TRIAL BY HASHTAG: SOCIAL MEDIA, FREE SPEECH, AND THE RIGHT TO A FAIR TRIAL IN INDIA

BY

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Abstract

The present paper investigates the emerging forms of media trials conducted by social media through reels, trending hashtags and algorithmic amplification - i.e., ‘Trial by Hashtags’. The paper also engages with several cases occurring in the recent past to understand and analyse how rights enshrined by the Constitution are balanced to ensure peace and justice in society and for the truth to prevail. This paper adopts a qualitative, case-based approach. This study examines a range of publicly documented incidents in India that sparked extensive, hashtag-driven discussion across platforms such as Twitter (X), Instagram, and YouTube. The cases selected span a variety of legal and social contexts, including criminal investigations, constitutional disputes, and instances of online harassment. To situate these examples within a broader legal and societal framework, the analysis draws on secondary sources such as legal scholarship, judicial observations, and media commentary.

Keywords: trial-by-hashtag, social media, digital outrage, India, public opinion, legal process, viral narratives.

Introduction

The media is often called the fourth pillar of Indian democracy because the media is an organ to bring out transparency of the democratic processes and to ensure systematic accountability. The media has the right of freedom and expression guaranteed to citizens under Article 19(1) of the Indian Constitution. The media thus has the power to change perspective, to deeply influence the layman and even to impose ideas in many cases. The media was thus supposed to bring out transparency in the working of the judiciary, legislative and executive and to support them by connecting it with citizens. Even in judicial cases, the media ensured transparency in judicial functioning and how trials are conducted. This highlights the importance of media in a society and the level of trust placed on it. However, over time, the media exceeded its role and began conducting media trials. Media trial refers to phenomena where media channels discuss the facts of a case in public and also deliver their verdict based on prima facie information. In *R.K. Anand v. Delhi High Court* case, media trial is defined as, *“The impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny....”*¹ The media is seen to be taking up the role of judiciary by declaring verdicts without taking in the basic principles of criminal law, like ‘innocence until proven guilty’ and ‘right to fair trial’. Since the verdict of media trials is delivered out in the public with incomplete research and deliberation, it is often false and stirs the public sentiment enormously.

The Supreme Court of India had previously commented on concerns of rising media trials in India. The court has repeatedly stressed on maintaining the delicate balance between press freedom and judicial integrity. The Supreme Courts in *Harijai Singh* and *Anr* case held, *“But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all items and in all circumstances as giving an unrestricted freedom of the speech and expression would amount to an uncontrolled license. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organized society, the rights of the press have to be recognised with its duties and*

¹ R K Anand v Registrar, Delhi High Court (2009) 8 SCC 106 (SC).

responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings.” (Para 10)² Most recently, the Supreme Court in Nilesh Navalakha and ors vs Union of India and ors, disregarded absolute freedom of speech exercised by media and social media and reiterated, *“Notwithstanding that freedom of speech is the bulwark of a democratic government and the role of the press/media to discover the truth and to ensure proper functioning of the democratic process is undoubtedly salutary, at the same time, the press/media must remember that its concern for discovery of truth and maintenance of purity in all streams of good governance by opening up channels of free discussion of issues should stop short of exceeding the permissible legal and Constitutional means.”* (Para 228)³

This case also highlights the increasing use of electronic media (especially social media) in conducting trials. Today with the increasing ease and accessibility of social media to citizens, media trials have transformed into social media trials. Social media trial, or hereby referred to as ‘Trial by Hashtags’ is a phenomenon where individuals use social media to deliver verdicts in judicial cases through the use of hashtags and algorithmic amplification. This worsens the societal conditions because trial by hashtags deeply polarise the society, forcing them to choose sides by conducting partial and biased trials based on incomplete information and lack of judicial competence. This further leads to extreme reactions of citizens, including boycott, cancel culture, physical violence, extremism and in aggravated cases, mob lynching. Social media trials also often violate the right to privacy of individuals to scoop out personal information to create perception and to villainise the person, even though these facts are mostly personal and irrelevant to the case.

In an increasingly digitally connected world, it is extremely complex to separate out issues from intermingling. For instance, it is important to balance both the freedom of speech and expression of individuals and the right to fair trial. The right to privacy is another right enshrined by the Constitution and it should be upheld even in front of the right to speech and expression. It is equally important to maintain judicial integrity but also not unreasonably restrict media liberty. In light of this, the present paper investigates the emerging forms of media trials conducted by social media through reels, trending hashtags and algorithmic amplification - i.e., ‘Trial by Hashtags’. The paper also engages with several cases occurring in the recent past to understand and analyse how rights enshrined by the Constitution are balanced to ensure peace and justice in society and for the truth to prevail. This paper adopts a qualitative, case-based approach. This study examines a range of publicly documented

² In Re: Harijai Singh and Anr; In Re: Vijay Kumar (1996) 6 SCC 466 (SC).

³ Nilesh Navalakha v Union of India (Bombay High Court, 18 January 2021).

incidents in India that sparked extensive, hashtag-driven discussion across platforms such as Twitter (X), Instagram, and YouTube. The cases selected span a variety of legal and social contexts, including criminal investigations, constitutional disputes, and instances of online harassment. To situate these examples within a broader legal and societal framework, the analysis draws on secondary sources such as legal scholarship, judicial observations, and media commentary.

The word of the year for 2025 as declared by Oxford was ‘Ragebait’ - “Online content deliberately designed to elicit anger or outrage by being frustrating, provocative, or offensive, typically posted in order to increase traffic to or engagement with a particular web page or social media account.”⁴ This precisely describes why and how a particular type of content is being circulated - to elicit views which, in turn, generate revenue. But this is not new, hate has always been the driving factor of TRPs and profit. Today, it is easier due to accessibility provided by social media. Social media has provided sophisticated means for spreading misinformation, opinions, and judgements. Driven by emotions, half-baked ideas and the need for performativity and validation, people post unverified information and unsolicited opinions in the digital realm, using the correct hashtags to drive algorithmic amplification. Since they choose negative content, it is bound to get viral. Once this happens, every other creator begins believing that this type of content would sell easily and heavily engages with the same, and floods the market with more and more negative content. This begins an unending cycle where unverified facts and incompetent opinions start polarising the society and creating sides.

Let us understand this through the example of the Sushant Singh Rajput death case. Following the death of Sushant Singh Rajput in June 2022, the entire case turned into a media frenzy - full of scandalous allegations, sensational headlines and the blame game. The media started its trial on the prima facie case, without looking deeply into facts or waiting for the decision of the court. Popular media channels began running and re-running shows on mere speculation around Sushant Singh’s death. This started a string of hateful comments and slurs around Rhea Chakraborty who was villainised beyond limit in this case. Media channels and later on, individuals through social media, conducted a one-sided trial⁵ against Rhea Chakraborty and her personal information, pictures were released as “facts”. Many described her as “manipulative woman”, the one who “performed black magic” and “drove Sushant (Singh) to suicide”. She was also called names such as, “fortune

⁴Oxford University Press, ‘The Oxford Word of the Year 2025 is Rage Bait’ (Oxford University Press, 1 December 2025) <https://corp.oup.com/news/the-oxford-word-of-the-year-2025-is-rage-bait/> accessed 14 December 2025.

⁵ TOI Entertainment Desk, ‘Rhea Chakraborty Cleared in Sushant Singh Rajput Case: A Look Back at the Five-Year Saga’ Times of India (online, 23 March 2025) <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/rhea-chakraborty-cleared-in-sushant-singh-rajput-case-a-look-back-at-the-five-year-saga/articleshow/119374070.cms> accessed [15 December 2025].

huntress”, “mafia moll”, “sex bait to trap rich men” and much more. The public sentiment against Chakraborty was incited to such levels that she was threatened with rape threats and messages like “commit suicide otherwise I will send people to kill you.”⁶ The polarisation of society was further aggravated by politically motivated groups which inserted religious and political angles into the case without any base. This worsened Rhea’s position, who was constantly trolled, slut-shamed and threatened, to the extent that her career in Bollywood was completely jeopardized to the verge of destruction. While the media had succeeded in conducting a media trial, hitting the TRP charts and earning revenue - people used social media to express their views, further conducting social media trials. This high profile case became the life and blood of every social media creator’s content directory. Hashtags such #ArrestRheaChakraborty #RheaMurderedSushant #JusticeforSSR #JusticeforSushant became trending hashtags, topping the charts for days and weeks at a stretch. However, while the press and the people had already declared Chakraborty guilty, the CBI closure report⁷ effectively cleared all charges on Rhea Chakraborty since there was no evidence of embezzlement or overdose. This becomes a classic case of trial by hashtag where hateful content and algorithmic amplification fuelled by unchecked facts and overriding emotions superseded Rhea Chakraborty’s right to privacy and right to fair trial and the judicial integrity of Indian courts. People, backed by the media, themselves became judges, exceeding their right of free speech and expression.

Something similar happened with Aryan Khan in his drug case. Khan being a Bollywood kid of the superstar Shahrukh Khan was mercilessly trolled and tried by social media for his alleged involvement in drugs. After Aryan Khan’s arrest by the Narcotics Control Bureau (NCB) after a raid on a cruise ship - the media assumed his guilt even before any verification of facts. In fact, in complete lack of evidence where no drugs were found with Aryan Khan, there was no blood test to confirm the drug presence, the media relied solely on some WhatsApp chats to blame Khan. The media frenzy never cared about facts or propriety. Media ethics were violated and issues like nepotism, Bollywood-Drugs mafia, voyeurism traps, etc., were called out in extreme manners. Social media further picked up the story and then hashtags like #RemoveNepotism #NepoKidAryan #DruggieArysan #BollywoodDrugnama #Druggyywood #ArrestAryan were repeatedly used to push fabricated stories. Information and photos from the personal lives of Aryan Khan and his family were put out on display in the name of investigation by common people through social media. Politically motivated groups further tinted the case with a communal angle, furthering their divisive agenda. Once this issue was

⁶ ‘Aryan Khan: Drug Charges Dropped Against Shah Rukh Khan’s Son’ (BBC News, 27 May 2022) <https://www.bbc.com/news/world-asia-india-61548614/> accessed 15 December 2025.

⁷ Central Bureau of Investigation, ‘Clippings dated 24 March 2025’ (PDF, 24 March 2025) <https://cbi.gov.in/assets/files/media/1032909912Clippings%20dt.%2024.03.2025.pdf> accessed 16 December 2025.

picked up and played again and again by the media, social media took its lead further. Creators (Social media creators) started creating conspiracy reels, theories, and memes on the said case. People started posting their unsolicited opinions and conspiracies, calling out Aryan Khand and other Bollywood celebrities on nepotism, drug consumption, intoxication etc. Again in this case, Khan's right to privacy and fair trial were violated by social media trials. Ruby Ahuja, a member of Aryan's legal team rightfully said, "The media must comprehend that they are dealing with someone's life and liberty. We must recognise that the outcome of cases is determined by reasonable court judgments, and any attempt by the media to generate an expectation of a specific conclusion is incorrect. Society may anticipate a certain conclusion that the courts may not deliver. The media's attempt to sway public opinion is not a healthy practice."⁸

While the media has the power to bring transparency and accountability in systems, it also has a greater power of influencing perspectives and creating perception. This great right comes with a greater responsibility of maintaining that trust and showing the truth - a principle highlighted time and again in media ethics and journalistic practices. But when the media of a country begins taking sides and showing biased news or conducting media trials for money or for TRP and revenue gains - it becomes destructive for the social fabric of that country.

This goes a step further with the new kind of trials by social media where people take out their worst from behind their screens. Ragebaits are used to incite human emotions, anger and frustration and to generate views. The more the interaction i.e., likes, shares, comments and views, on a reel, the more revenue generated. Thus, social media becomes a house for unverified facts and conducting trials superseding judicial processes. Additionally, the proximity and multiplicity of reels leads to prejudicing the public opinion to believe the guilt of the accused because of their continuous nature. This public discourse of reels asserts pressure on otherwise impartial judiciary and affects their decision making subconsciously. The reels and their intrusive nature also exposes the witnesses to public scrutiny, threats and trolling, affecting both their testimonies and their privacy. The character assassination imposed by social media is of such permanent nature that even if the accused is acquitted of the charges, the social stigma remains. Such factors of social media trial deeply undermine the principle that "a person is innocent until proven guilty."

⁸ Uday Pratap Singh, 'Unethical, Immoral and Unfair Trials by "Media Court Rooms"' (Khurana & Khurana, 1 October 2024) <https://www.khuranaandkhurana.com/2024/10/01/unethical-immoral-and-unfair-trials-by-media-court-rooms> accessed 29 December 2025.

It is further important to note how ‘Trial by hashtags’ is actually an evolutionary form of traditional media trials. Media trials generally emerged out of intense journalistic scrutiny with a larger team of people working on the same issue. However, in trial by hashtags, speed and engagement is prioritised which eliminates any possibility of meaningful accountability. Complex legal issues are reduced to slogans and hashtags, leaving little or no space for nuance. Social media allows everyone to act as an investigator, prosecutor and judge. This not only spreads misinformation, but also normalises harassment, bias and harm. As a result, established legal standards like evidence, due process, fair trial and burden of proof are frequently undermined by emotions, algorithmic amplification and virality.

Today, social media has allowed a greater exercise of the right to free speech and expression. But the drive of social validation and performativity has simultaneously decreased the conscience of the public at large. While media is taught ethics and journalistic practices, this has not been done for social media so far. The Press Council of India has framed the norms of journalistic conduct for media houses which prohibit the publishing of prejudicial material and directs the media to respect the court and its procedure. The norms further guide journalists to avoid sensationalism and yellow journalism and to prepare factually verified reports. But people posting on social media, or ‘creators’ as we call them, are not bound by such ethics and norms. Thus, with the rise of social media, these norms are ignored, leading to dramatization of legal issues at the sake of truth and justice.

While understanding the delicate balance between freedom and restrictions granted by the Indian constitution is a mushy area when it comes to media, it is even more difficult to analyse the same for social media. Social media often tends to forget the division between freedom and restrictions and thus violates several provisions, leading to severe aftereffects.

Social Media Trial and the Indian Constitution

Article 19(1) of the Indian Constitution guarantees the right to freedom of speech and expression to each citizen which is well-exercised when people express their thoughts and opinions on social media. But when this expression becomes unabridged and violates the rights of others, this becomes problematic. Thus, the Indian Constitution, under Article 19(2) puts reasonable restrictions on the freedom of speech and expression. These reasonable restrictions ensure the protection of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency and morality in relation to contempt of the court, hate speech, defamation or incitement to an offence. Thus it becomes important to understand for everyone using social media

that rights are not absolute; the rights are given to express opinions, not conduct trials. Conducting trials thus becomes a clear violation of other's rights.

Social media due to its accessibility and proximity with the users has a deep impact on society and the mindset of laymen. Thus, misinformation, insightful content or hate speeches often create uncontrollably chaotic situations, often escalating into mob violence. In 2018, Bengaluru witnessed mob violence⁹ occurring out of WhatsApp rumours. However, when social media conducts trials without verified information and eulogises or villainises people, it becomes even more difficult to contain the public sentiment which is easily fuelled by divisive content and deep polarisation. Thus, social media content needs to be regulated and people need to deal with such content sensitively in an informed manner.

Social Media Trial and an Individual

Since social media trials discuss the private lives and facts of a person, they often invade their privacy and disrupt their peace. Trolling, online harassment, abuse hurling, and character assassination through such trials not only affect a person's social image but also their mental peace. This further creates a social stigma around the person and often affects their employment and perception in the society. Continuous social media posts and media trials inflict mental distress on victims and their family members. Since social media is driven by algorithms which are further amplified by hateful content, scandalous posts and sensational slogans are repeatedly used to garner views and higher revenues. This greed often overshadows an individual and their integrity.

Media posts like in the Kathua gang rape case disclosed the identity of victims which was barred for media as per the POCSO act. Social media users often further try to seek the identities of women affected by such crime like in the case of Nirbhaya gang rape - sometimes out of curiosity and sometimes out of apathy. This imposes an adverse impact on the victim's life. Even the reputation of the accused gets destroyed by social media trials even if the accused is later acquitted.

Article 21 of the Indian Constitution guarantees fundamental right to privacy to each individual which is violated by such social media trials where private information is scooped out to heighten sensationalism. Especially in high profile cases, unnecessary facts are scoured out to generate public interest.

⁹ Nadim Asrar, 'In India, WhatsApp Stirs Up Deadly Rumours' (Al Jazeera, 17 July 2018) <https://www.aljazeera.com/features/2018/7/17/in-india-whatsapp-stirs-up-deadly-rumours> accessed 20 December 2025

Social Media Trial and the Judiciary

Judiciary ensures fairness and justice in the country. The court ensures that citizens are protected. The law ensures everyone a fair chance of representing themselves before the courts of justice. The right of fair trial is enshrined under the Indian constitution to every citizen. However, when social media trials are conducted, public opinions are formed, pressure is created on the judicial machinery, eventually affecting the judicial process. Additionally, such trials create a perception around the accused which makes the lawyer hesitate in taking up such cases, thus affecting their right to fair trial. Social media often also scrutinizes lawyers for taking up such cases. Social media trials are also directly contempt of courts because legally the media is not allowed to publish or broadcast any opinions or views of any case that is still under the proceedings of the court. Further, we understand that judges are trained to remain impartial, but social media trials and societal pressure makes it difficult for a judge to conduct a free and fair trial for the accused. It also influences the judgement as an image is already portrayed. Subsequently, social media trials through their impositions and early judgements, reduces the authority of courts by connecting the case with emotions and undermining judicial process. Often in rape cases and terrorist cases, social media declares the guilt of the accused, demanding death penalty - this incites the public sentiment which pressurizes the judiciary and also undermines the judicial power of deciding and declaring any kind of punishment for any accused.

The Way Forward

Media is based on norms and ethics, but social media is much more open and allows greater freedom of speech and opinion. Social media is largely free from any ethics or norms - a lot of things even escape the social media guidelines due to their sophisticated methods and language.

However, trials by hashtags erode the legal principles of fairness, due process and impartiality. Such social media trials reduce justice to the spectacle of public judgement rather than constitutional right. While freedom of speech and expression is necessary for a democracy, it cannot be permitted to override other fundamental rights like fair trial, right to privacy and also judicial integrity. Certain guidelines need to be set in to deal with such social media trial cases, which understand the nuance of the social media realm. In today's digital era, social media is a powerful tool of communication. Social media allows citizen's opinions and true news to come out, ensuring accountability and transparency. Due to its proximity and continuity social media shapes narratives and opinions even faster than traditional media. However, there is little accountability on social media platforms, making trial by hashtags a greater threat to justice.

Social media trials require a clear legal definition, different from traditional media trials, to include the nuance of social media technicalities. It is further important to enforce robust data protection and platform accountability mechanisms. Subsequently, courts should be empowered to proactively curb prejudicial online narratives and specialised training should be provided to judges, prosecutors and law enforcement officials about social media, algorithmic amplification, digital evidence etc.

Further, it is imperative to promote digital literacy to educate users on responsible online conduct and legal consequences of misinformation, harassment and public verdict-making. It is equally essential to mandate stronger ethical obligations for digital media. For a progressive society and stronger social fabric, it is essential to introduce cyber guidelines that hold individuals and platforms accountable for spreading false or prejudicial content related to ongoing cases. It is now required to strike a balance between digital responsibility while also preserving freedom of speech. The ultimate goal should be to create a social platform for dialogue and discourse rather than conducting public trials, thereby safeguarding both democratic values and the integrity of the justice system.

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