

## **MEDIA WORKSHOP ON CRIME-JUDICIAL REPORTING**

\*JUSTICE G..N. RAY

Dear friends

I express my thanks to CJAR and CMS Academy for organizing this workshop on Crime and Judicial Reporting. Today the need for organizing such workshop on the subject is felt even more when there are frequent conflicts between the judiciary and the media. Very recently Press Council of India in association with the apex court of the land, National Legal Services Authority, Indian Law Institute and Editors Guild of India had organized two days workshop on “Reporting of Court Proceedings by Media and Administration of Justice” followed by regional workshops wherein various aspects of the media functioning vis a vis courts of law have been addressed by eminent jurists, Hon’ble Judges of the Apex Court Hon’ble Chief Justices and Judges of different High Courts and also by the Hon’ble Chief Justice of India. During the discussions it was felt that journalists reporting court cases and legal proceedings should be trained in the subject. Thus five days training programme was organized at the Indira Gandhi Nation Open University. Even before I go into the academics of the subject. I would like to sound a word of caution. There have been reports of the media approaching the parties to the cases especially those involving

\*Inaugural address by Mr. Justice G.N. Ray, Chairman, Press Council of India at the workshop on “CRIME - JUDICIAL REPORTING” on 21<sup>st</sup> February, 2009 at Centre for Media Studies, New Delhi.

celebrities, to pay for their side of the story. This ‘cheque-book journalism’ prevalent in the west in the 80’s and 90’s needs to be sniffed out in its infancy in the country lest it turns into a monster beyond control.

Now as you all are aware that India is a democratic country and the media recognized as the ‘Fourth Estate’ occupies a very important and significant place in a democracy along with the other three organs of the state – the legislature, the executive and the judiciary. For successful and smooth functioning in a democracy all the organs of the state must operate in tandem and compliment each rather than coming in conflict with each other.

It is axiomatic that freedom of speech and expression being most important and fascinating facet of liberty is in alienable human right.

The United Nation’s Charter has recognized this basic fundamental human right. Indian Constitutions has also recognized this basic and fundamental right by incorporating such right in Part III of the Constitution with a guarantee to protect this inalienable fundamental right in Part III of the Constitution, the founding fathers of The Indian Constitution ensured to protect fundamental rights against ‘State’ not as ordinarily understood but whithen the extended meaning of that expression under Article 12 of the Constitution, thereby making fundamental rights enforceable not only against Central or State governments but also against local and other authorities coming under the definition of state under Article 12 of the Constitution.

Article 19 deals with the right of freedom in different facets guaranteed in Indian Constitution. Article 19 (1) (a) provides that “All citizens shall have the right to freedom of speech and expression’. Article 19 (2) however provides for imposition of reasonable restrictions in the enjoyment of fundamental rights guaranteed for freedom of speech and expression in Article 19 (1) (a). Article 19 (2) provides that “Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interest of the sovereignty and integrity of India, the security of the state, friendly relation with the foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Sub clauses (3) to (6) similarly provide for reasonable restrictions in the exercise of other fundamental rights guaranteed in clauses (b) to (g) of Article 19 (1) of the Constitution. It is to be noted that Article 19 (1) guarantees those great and basic rights which are recognized as the natural rights inherent in the status of a citizen of free country and not the rights created by statutes or otherwise. It is to be noted here that apart from reasonable restrictions incorporated in Article 19 (2) of the Constitution there is indirect limitation of fundamental rights being tempered by

fundamental duties (Part IV A – Article 51 A ) inserted by 42<sup>nd</sup> Constitution Amendment Act 1976. That apart, the Apex Court in E.M.S. Namboodripad’s case (1970 (2) SCC (325)) held that apart from the power to proceed in contempt under Contempt of Courts Act, High Courts and Supreme Court being superior courts of record have power to proceed for contempt of such Courts. Article (19) (1) (a) and 19 (2) are, therefore to be read with Article 129 and 215 of the Constitution.

The Constitution of India has not laid down any specific provisions for fundamental rights to be enjoyed by the media as such. The media persons enjoy the freedom of speech and expression subject to reasonable restrictions like any other Indian citizen. Law courts in India including the Apex Court of the country have not failed to observe in no uncertain terms that freedom of speech and expression enshrined in Article 19 (1) (a) is available to media even though, the Constitution does not specifically refer to media.

Constitution makers have ensured that the freedom of expression to be enjoyed by the media does not come in conflict with the independence of justice delivery system and misuse by media against such independence of judiciary does not go unchecked. The media is expected and obligated to work within the framework of Constitution and other relevant statutes and

guidelines framed by the Press Council India, the statutory regulatory body for the print media in the country, and other similar bodies by way of minimum standards of ethics to be observed and followed by media so that media enjoys higher standards of protection in the matter of freedom of expression. It goes without saying that for ethics, an independent and fair judiciary is a *sine qua non*.

Justice Felix Frankfurter a celebrated jurist and judge observed. **“A free press is not to be preferred to an independent judiciary, nor an independent judiciary to free press. Neither has primacy over the other, both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press”**.

The basic role of the media is to inform, educate and guide the society. Media is the most potent organ of communication which can keep the society well informed about violations of law and court proceedings on important matters in order to expose the breaches of law whenever and wherever that occurs and to ensure fair and just treatment to all. All of us have witnessed how media exposures have made even the mighty and powerful personalities stand before the law of the land and public awareness

created by the media has quite often ensured just and fair treatment to seekers of justice who perhaps could not properly ventilate their grievances has there been no appropriate support from the media.

The judiciary in its anxiety to reach the seekers of justice particularly to the weaker section of the society has not failed to note the felt need to protect the freedom of the media without which the breaches of law are often not brought to book. The notion that judiciary and press must join hands in strengthening democracy has been fortified by several landmark judgments by the judiciary over the years, to scuttle any overt or covert attempt made to hinder the freedom and liberty of the press. But the broad and well recognized equation between Judiciary and Media often comes into conflict when the judiciary perceives media reporting as an interference in administration of justice and the media invokes the fundamental right under Article 19 (1) in reporting or commenting on court cases. In such conflict, the courts rest their power and authority upon the public's right to independent and unbiased justice. The founding father of Indian Constitution struck a balance by guaranting the freedom of speech and expression in a very wide language but at the same by imposing reasonable restrictions under Article 19 (2) on such freedom under various heads, such as (a) sovereignty and integrity of India (b) security of the State (c) friendly

relations with the foreign States (d) public order (e) to prevent incitement to offence (f) decency (g) morality (h) contempt of court and (i) defamation.

As responsible motivator and the leader of the society, the journalists should act with more caution while reporting crime. Sensationalism, glorification of criminals and marketsim should not be the criteria while reporting crimes.

The word *crime* originates from the Latin *Crimen* (genitive *criminis*), from the Latin root *cerno* and Greek *kpivo* “I judge”. Originally it meant “Charge (in law), guilt accusation.

New Webster’s Encyclopedia Dictionary of English Language defines crime as an action that is deemed injurious to the public welfare and is legally prohibited.

It has been a matter of concern that of late, media has become very proactive in focusing on incidents of crime by liberally commenting on the role of police causing investigation, the progress of investigation, pinpointing the perpetrator of the crime, its supposed associates, motive of crime etc even before investigation is complete and relevant facts are ascertained. Even on private life of many, media very often freely comments when such probe in private life was uncalled for and more often than not before ascertaining the foundation for such comment thereby transgressing

the journalistic ethics for maintaining privacy and dignity of the persons being commented upon.

Such action of media often induces the general public to believe in the complicity of the person indicted by the media thereby putting undue pressure on the course of fair investigation by the police. Privilege of presumption of innocence to which an accused is entitled to is blatantly discarded by the media in presenting facts, often distorted and unverified and presented with angularity pointing to the involvement of the person indicted in the commission of crime. It is a common experience that a newspaper or a channel often picks up one case of crime as a special subject of its choice and vigorously goes on reporting on such incident on a day to day basis for a long time, commenting without any restraint on supposed evidence of the crime without ascertaining the factual matrix, with so much conviction that general public start believing that the crime was commissioned by the person indicted by the media. If ultimately such person is not charge sheeted for want of materials warranting charge sheet or ultimately acquitted by court of law for want of unimpeachable evidence, people start entertaining a belief that there must have been some manipulation by police or other agencies and a fair trial had not been done in the case. The end result is loss of public faith in functioning of police and

investigating agency and even in appropriate functioning of law courts although in a given case there might have been fair investigation but the commission of crime by the accused could not be established by convincing evidence. The role of media in ensuring fair trial for the oppressed and down trodden should not be underestimated. It needs to be noted that by and large because of vigilant reporting by the media, the concerned criminal had ultimately been punished and but for such persistent vigilance by the media, the accused particularly if such accused is economically or otherwise powerful would have escaped. Media plays a crucial role in ensuring that justice is seen to be done and transparency in judicial system is not affected. Even though, the role of media is really laudable and should not to be understated, the other aspect of over enthusiasm and unethical practices indicated hereinbefore should also be borne in mind.

In recent times, sting operations made by the media deserve attention. Overdoing of media in sting operation and improper accusation of the innocent because of unfair sting operation and sometime motivated distortion of facts have shocked the public. Uma Khurana's case is an opt example of the maladies of such action. Irresponsible comments on sub judice matters have very often interfered with the course of air administration of justice and dignity of law courts.

As Chairman of the Press Council and also as a former Supreme Court Judge I strongly hold that there should not be any kind of pre – censorship in media reporting even at the risk of occasional abuses of the freedom enjoyed by the media on account of irresponsible reporting. However, the constitutional, statutory and other restrictions or mandates of media ethics need to be obeyed because such restrictions are not unreasonable but are founded on good public polity. The media, in my view, can operate quite effectively and in responsible manner under the umbrella of fundamental right of freedom of speech and expression guaranteed to it and respected and recognized by law courts in India and people at large. A right, however fundamental it may be, cannot be devoid of corresponding duty and obligation not to interfere with such right of others and destabilizing the functioning of other limbs of democracy and the fabric of the Indian Society, the equilibrium of which, in the context of multi religious, multi lingual and multi ethic denominations, is delicately balanced. It is bound to suffer irreparable damage if irresponsible and unbridled reporting is allowed in the name of freedom of speech and expression.

Transparency in functioning of every limb of democracy is not only desirable but also imperative because it adds to the credibility of the system and inspires confidence of the people. The strength of the judiciary lies in

the confidence and respect of the people in the justice delivery system. Therefore, it will be only appropriate that except in limited cases, the judiciary must work with full openness and will not restrict ventilation of court proceeding by media with any conservative or pedantic mind set. Although no court can permit media or for that matter any one to interfere with judicial system but in cases coming within the parameter of contempt proceeding, courts of law should take liberal views vis a vis media as far as practicable.

The media on the other hand, must appreciate that media and judiciary, two vital pillars of democracy are natural allies and one compliments the other towards the goal of a successful democracy. The media must perceive that in the name of transparency and media's freedom it cannot resort to improper and unethical practices to interfere with administration of justice and demean the judicial system of the country. It will be extremely unfortunate if judiciary which has always stood for liberty of speech and expression of media loses its credibility and respect on account of irresponsible act of media. To my mind, the reporters of media should have some basic knowledge about functioning of law courts so that no erroneous reporting for want of such basic knowledge takes place.

Recently Chief Justice of India K.G. Balakrishnan reminded the media about its role in reporting crime and on going investigations speaking at a workshop on “Reporting of Court Proceedings by Media” in Mumbai, “Privacy of the person must be protected. Sometimes damaging information is revealed during the investigation. It adversely affects people’s right to a fair trial.”

In order to check any irresponsible act in crime reporting, there should be some kind of regulation to restrict overpublicity of criminals by highlighting their criminal records and publishing their photographs and live videos and any such report which can affect the investigation, promote criminal activity and generate fear in the society. We should be careful that crime reporting does not lead to more crime. If the journalists or media reporters remain alive to their responsibilities and duties as representatives of Fourth Estate and work with the orientation of mind for Bahujkana Hitaya and Bahujana Sukhaya (for the welfare and well being of many) by keeping the paramount interest of the society and nation above all other consideration, I am confident much of the aberrations in today’s media scenario will remain considerably checked.

Namaskar

