Gora Chand Pattnaik Memorial Trust – 4th Law Lecture
on

Reasonableness of restrictions on reporting on Sub-judice matters

[1]G.N. Ray

Dear friends, it is indeed a great pleasure to be amongst you and share my views on the 4th Law Lecture of Gora Chand Pattnaik Memorial Trust (GCPMT) in hallowed memory of late Gora Chand Pattnaik, a worthy son of Orissa, an eminent jurist and mentor of several lawyers and Judges of Orissa, an educationist, philanthropist and respected social activist. As you all are aware that this trust is working towards the basic purposes;

1. To protect and promote the interests of legal profession.
2. To have due regard to the philosophy of jurisprudence and encourage research and development of the legal knowledge and law.
3. To apply the legal knowledge and experience in the field of law for the promotion of public good.

I also take this opportunity to congratulate Brother Justice Dr. Arijit Pasayat whom the trust very appropriately proposes to felicitate.

I have the privilege to share my views on the subject i.e. **"Reasonableness of restrictions on reporting on matters subjudiced"** in the capacity of both as the former judge of the apex court and also as the Chairman of Press Council of India, which is the apex body for regulating the Print Media in India.

---

[1]*Law* Lecture by Mr. Justice G.N. Ray, Chairman, Press Council of India on "Reasonableness of restrictions on reporting on matters sub judiced" on August 31, 2008 at Bhubaneswar organised by Gora Chand Pattnaik Memorial Trust

Biological existence is not the goal of a human life. A man must have a meaningful life touching all facets of a dignified life. To achieve this, the most important component is liberty in its full manifestation. Therefore, life and liberty are inseparably intertwined. Man is not only born free but has inherent right to live free. The superior faculty which distinguishes man from other living creatures is the highest form of consciousness in a living organ and its power to comprehend the finer elements at that level of consciousness and also the power to express and articulate such finer feelings. The very sacred religious script of Hindus, 'Bhagvad' has mentioned that after passing though numerous life forms a creature attains the highest living form of mankind. The Bible indicates that God has created man after its image. The ancient Hindu philosophy has stated with conviction that human life is potentially divine and by self realisation man may achieve its oneness with God. With, such self realisation, Adi Sankaracharya asserted 'Shivoham' (I am Shiva).

It is axiomatic that freedom of speech and expression, being,the most important and fascinating facet of liberty, is an inalienable human right. The United Nation's Charter has recognised this basic fundamental human right. Indian Constitution has also recognised this basic and fundamental right by incorporating such right in Part III of the Constitution with a guarantee to protect this inalienable fundamental right subject to reasonable restriction. In enacting fundamental rights 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 within 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. Fundamental rights under Indian Constitution are enforceable against laws and executive actions

which violate fundamental rights guaranteed in Part III of our Constitution. In brief, it may be indicated that all laws contravening and/or violating fundamental rights were declared to be protanto void. Reference may be made to Article 13 (1) and 13 (2) of Indian Constitution read with Article 13 (3) (a) and (b).

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 recognised 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 42nd 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 superiors 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.

It may be appropriate to note that the Apex Court in Ministry of Information Vs. Cricket Association reported it 1995 (2) SCC 161 indicated what freedom of speech and expression means. It has been held that such freedom means right to express one's convictions and opinion freely by word of mouth, writing, picture or any other manner addressed to eyes. The Apex Court has also held that publication of advertisements is a commercial speech protected by Article 19 (1) (a) (Tata vs. MNTL – 1995 (5) SCC 161). Similarly right to hold telephonic conversation in privacy has been upheld by the Apex Court in PUVL Vs. UOI 1997 (1) SCC 301.

Freedom of media being an integral part of the freedom of expression is essential pre-requisite of a democratic set up. The media, the mighty Fourth Estate in a democracy, operates in tandem with the other three: legislature, executive and the judiciary within the framework of the constitutional provisions in public and national interest. 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 of India, the statutory regulatory body for the print media in the country, and similar other bodies by way of minimum standards of ethics to be observed and followed by media so that by observing the same, media in turn enjoys higher standards of protection in the matter of freedom of expression. It goes without saying that for this, 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 a 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".**

Free Press has always been in the heart of India's body polity. Even long before independence of India, Pandit Jawaharlal Nehru the first Prime Minister of free India, protesting against Press Act 1910 asserted "**I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press".** The Press Council of India has always deprecated any attempt of pre censorship even though on various occasion freedom of speech and expression had been abused by the Media. Interestingly, in one of the earliest decision of the Supreme Court in 1950 in Brij Bhusan versus State of Delhi it was held "There can be little doubt that imposition of pre-censorship in journal is a restriction on the liberty of the press". It will be pertinent to note that yet in another earliest judgment of the Supreme Court, Mr. Justice Patanjali Shastri (as his Lordship then was) in majority decision in Romesh Thapper vs. State of Madras (A 1950 SC 124) held by quoting

Justice Madison "A freedom of such amplitude might involve risks of abuse. But the framers of Constitution may well have reflected with Madison who was the leading spirit in the preparation of the first Amendment of the Federal Constitution that "it is better to leave a few noxious branches to this luxuriant growth than by pruning them away, to injure the vigour of those yielding the proper fruits." (emphasis added to Madison's observation quoted by Shastri J)

In this context, observation of IInd Press Commission is quite instructive: -

The Press does have the right, which is also its professional function, to criticize and advocate. The whole gamut of public affairs including the administration of justice is the domain for fearless and critical comment. But the public function which belongs to the Press makes it an obligation of honour to exercise this function only with the fullest sense of responsibility. Without such a lively sense of responsibility a free Press might readily become a powerful instrument of injustice. The competing claims of the court to maintain its authority and of the freedom of the Press to comment on matters of public interest must be reconciled. Without a free Press there can be no free society. Freedom of the Press, however, is not an end in itself but a means to an end of a free society. The independence of the judiciary is no less means to the end of a free society and in fact the proper functioning of an independent judiciary puts the freedom of the Press in its proper perspective. A free Press is not to be preferred to an independent judiciary, nor an independent judiciary to a free Press either. No judge fit to be one is likely to be influenced consciously except by what he sees and hears in court and by what is judicially appropriate for the deliberation. However, judges are human. There is the powerful pull of the unconscious. Since judges,

however, stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible publication"; and that "while newspapers may, in the public interest, make reasonable criticism of a judicial act or the judgment of a court for public good; they should not cast scurrilous aspersions on, or impute improper motives or personal bias to the judge. Nor should they scandalize the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge."

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 had 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.

It has been a matter of concern that of late, media has become very proactive in focusing on incidents of crime from day one 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. Aarushi murder case is a glaring example of media's overdoing and unethical practice. 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 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. It however 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 time, sting operation made by the media deserves attention. It is true that dark deeds are done in dark and to unearth such evil acts, secret investigation is necessary. But overdoing of media in sting operation and improper accusation of innocent because of unfair sting operation and sometime motivated distortion of facts have shocked the public. Irresponsible comments on sub judice matters have very often interfered with the course of fair administration of justice and dignity of law courts. It is in this disturbed scenario, a very appropriate step was initiated by the Supreme Court in convening two days' National Seminar in Delhi in March 2008, by associating Press Council of India, Indian Law Institute, Editors

Guild of India and National Legal Services Authority prime mover being Supreme Court Legal Services Authority of which Chairman is brother Justice Arijit Pasayat. In the said Seminar various aspects of media functioning vis a vis courts of law have been addressed by eminent jurists, media personalities, Hon'ble Judges of the Apex Court and also by the Hon'ble the Chief Justice of India. Later on, as a follow up measure, regional workshops were organised. The first of such workshop was held at Cochin. Hon'ble Chief Justices and Judges of various High Courts in southern zone, jurists, media persons and Hon'ble Judges of Supreme Court participated in the workshop. The second regional workshop has been held at Cuttack where Hon'ble Chief Justices and Judges of High Courts in eastern region, jurists and media persons and the Hon'ble the Chief Justice of India and some Hon'ble Judges of the Supreme Court have taken part. Needles to point out, such seminar and workshops will go a long way in finding out the proper equation between judiciary and media and guiding the two limbs of democracy to have proper understanding and evolving ways and means for more effective functioning of media vis a vis courts of law. It does not require reiteration that critical evaluation of the equation between functioning of media and law courts will strengthen both the institutions, the two strongest pillars of democratic set up. The subject matter of today's topic for discussion "Reasonableness of Restrictions on Reporting Sub-judice Matters" is undoubtedly very relevant in today's scenario of media functioning deserving dispassionate approach to various aspects of the issue.

Mr. Justice R.S. Sarkaria, a former Judge of the Apex Court and former chairman of the Press Council of India made valuable comments on pending proceedings published in the Guide to Journalistic Ethics.

The implications of pending proceeding in the context of Contempt of Court, Press Council of India's jurisdiction, and journalistic ethics were very succinctly indicated by Justice Sarkaria pointing out that when does a matter

become sub judice in a court of law is a question which is important not only for the purpose of ascertaining whether the bar of Press Council's jurisdiction under sub-section (3) of Section 14 of the Press Council Act, 1978, is attracted, or not, but also in the context of Contempt of Courts Act.

It will be appropriate at this stage to appreciate what is meant by the expression 'sub judice'. This Latin expression means 'under a Judge'. A case in seisin of a competent court of law is treated as sub judice. The case retains such status till the judgment in the case is delivered. Section 3 of Contempt of Courts Act 1971 defines what is pending proceeding. It provides:-

"a judicial proceeding –

(a) is said to be pending –

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law –

(i) where it relates to the commission of an offence, when the charge sheet or challan is filed, or when the Court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the Court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or , where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending."

The Contempt of Courts Act defines contempt under two categories namely, civil contempt and criminal contempt. Civil contempt is defined under Section 2(b) of the Act. In the discussion of today's topic, civil contempt may not engage us. The definition of criminal contempt under Section 2(c) is wide and the same is directly referrable to publication whether by words spoken or written or even by signs or by visible representations which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

Section 2(c) seeks to protect (i) authority of the Court, (ii) due course of judicial proceeding, and (iii) the larger issue of administration of justice. Any publication, which scandalises or tends to interfere or interferes or tends to obstruct or obstructs authority of the court, due course of judicial proceeding and administration of justice would come under the cover and sweep of criminal contempt. The definition of criminal contempt although very wide is tempered by Section 3.

Section 3 provides that although there has been publication or distribution of publication which interferes or tends to interfere with, or obstructs the course of justice in connection with any civil or criminal proceeding (whether pending or not at the time of publication), such publication or distribution would not constitute contempt of court unless the circumstances and to the conditions specified in the section being fulfilled.

This section enumerates some of the exceptions to criminal contempt as defined in Section 2(c)(ii) of the Act and this section read with sections 4 and 5 of Contempt of Courts Act enumerate some of the defences available to a charge of contempt in relation to some publication or distribution of such publications or reporting or commenting on judicial proceedings and acts. Reference may be made to the decision of Supreme Court in Suba Rao vs. Advocate General (A 1981 SC 755). The Supreme Court held in the said case that from the Explanation to sub-section (2) of Section 3, it is clear that there will be no criminal liability for contempt of court unless the contemptuous publication is made at the time when the proceeding is 'pending' before the court. Furthermore, sub-section (2) of the Section 3 expressly confines its operation to those categories of contempt which are referred to in sub-section (1). Sub-section (2) of the Section is not applicable to that category of contempt which falls under sub-Clause (i) of Section 2 (c), or which is otherwise of a kind different from those mentioned in Section 3(1). Therefore, the question of 'pendency' becomes irrelevant when the contempt is by way of scandalizing the courts or constitutes an attempt to lower their authority.

The defence, under sub section (3) of section 3 however, is not allowed in the case of distribution of any publication printed or published otherwise than in conformity with the provisions of Sections 3 and 5 of the Press and Registration of Books Act, 1867.

The explanation to section 3(2) is important. It provides: For the purpose of this section, a 'judicial proceeding'

a. Is said to be pending

A. In the case or a civil proceeding, when it is instituted by the filing of a plaint or otherwise;

B. In case of criminal proceeding under the code of Criminal Procedure, 1898, or any other law.

(i) Where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the Court issues summons or warrant, as the case may be, against the accused, and

(ii) In any other case when the Court takes cognizance of the matter to which the proceeding relates, and in the case of civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revisions preferred, until the period of limitation prescribed for such appeal or revision has expired;

b. Which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

The expression 'Challan' or Charge-sheet' referred to in sub-clause B (i) of the explanation means a final report submitted by the police to the magistrate in a case in which it has made investigations under Chapter 12 of the Code of Criminal Procedure. So far as the police is concerned, the report under Section 173 is terminus with the police investigation. The reason being that by this report the police moves the magistrate to take cognizance irrespective of whether the report says that the offence has been committed by the person named in the report under Section 173(2)(1)(a). Thus, the submission of the report or challan in a criminal proceeding is the starting point of the pendency of the matter in a criminal case.

Section 4 of the Contempt of Courts Act, 1971 enjoins that subject to Section 7, a person shall not be held guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage there of. The right under Section 4 is subject to Section 7 of the Contempt of Courts Act.

While section 4 protects fair and accurate report, Section 5 protects fair criticism of a judicial decision because the public has an interest in the proper administration of justice.

This provision in section 5 is an exception to the class of contempt by scandalisation of a court as mentioned in Section 2 (C) (i). This provision gives recognition to the basic principle enunciated by the British Court in R. Vs. Gray: (1900)2 Q.B. 36 which is as follows. Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or public good, no court could or would treat that as contempt of court.' In Ambard V.A.G. of Trinidad A. 1936 P.C. (141), Lord Atkin described the parameter of the same exception as 'no more than the liberty of any member of the public to criticize temperately and fairly but freely any episode in the administration of justice.' It is to be noted that the plea of 'fair comment' on a judgment under section 5 will not be available if the comment is made before the case is heard and finally decided.

In Perspective Publications Vs. State of Maharashtra (AIR 1971 SC 221, 230), the Supreme Court held that it is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because 'justice is not cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.' In another decision, the Supreme Court indicating the parameter of fair criticism has held that if the criticism is likely to interfere

with due administration of justice or undermine the confidence which the public rightly response in the courts of law as court of justice, the criticism would cease to be fair reasonable criticism as contemplated by section 5 but would scandalize courts and substantially interfere with administration of justice. (Ram Dayal Vs. State of UP, popularly known as Umaria Pamphlet case, AIR 1978 SC 921.)

Section 7 refers to proceedings of Court in chambers or in camera. In such cases, there are several categories of prohibited publication namely (a) where publication is contrary to the provisions of any Act for the time being in force; or (b) where the Court expressly injuncts the publication of all information relating to the proceeding; or (c) where publication of such proceeding or information is prohibited on grounds of public policy; or (d) the publication of any proceeding where the Court sits in Chamber or in camera; or (e) where publications are not permitted for reasons connected with the public order and the security of the State; or (f) where the information about such proceeding relates to secret process; or (g) discovery or invention which is the subject matter of such proceeding. Sub Section (2) of Section 7 provides that a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of an order made by a Court sitting in Chamber or in camera, unless the Court has prohibited such publication on grounds of public policy or reasons connected with public order or security of the State or on the ground that the information relates to the secret process, discovery or invention or in exercise of any power vested in it.

Section 13 (a) has given certain guidelines to the effect that no Court shall impose a sentence under this Act for contempt of court unless the court is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

Section 13(b) also provides that in any proceeding for contempt of court, justification of truth can be a valid defence if it is satisfied that (a) it is in public interest and (b) the request for invoking the said defence is bona fide. Sub Section (b) has come by way of an amendment, which the Press Council supported by giving its view in writing to Parliamentary Committee examining the proposed amendment when such view of the Press Council was sought for. Section 13 (b) has substantially fine tunes the import and amplitude of Section 2(c) of the Act.

The observation made in the "**Contempt of Court and the Press"**, published jointly by Indian Law Institute and Press Council of India deserves consideration. "The High Courts and Supreme Court have worked on the assumption that any attempt to undermine the confidence of the people in the administration of justice must be given priority over the need to guaranteed freedom of expression.......The Press is seen as transmitting information about the public proceedings and judgment of courts. Anything else which may have the effect of undermining respect for the administration of justice falls within the reach of the law of contempt. The courts have accorded the Press a limited censorial role within this overall perspective."

In England and Wales, Australia and Canada it is generally considered inappropriate to publicly comment on cases sub- judice and can even be an offence in itself, leading to contempt of court proceedings. This is particularly true in criminal cases, where publicly discussing sub- judice cases may constitute interference with due process.

In the United States, First Amendment concerns about stifling the right of free speech which prevents such tight restrictions on comments sub-judice. However, there are still protections for criminal defendants. There is a body of opinion that holds that the sub-judice rule in its current form should be revised to provide more protection for freedom of expression. Central to this argument is the media obligation to cover issues that are in the public interest.

Most public matters before judges are simply ' in court', and not necessarily sub-judice to the extent that voicing one's views about them publicly would merit contempt charges. The courts should recognize the distinction.

It is only desirable that the Supreme Court should draw a clear distinction between matters that are simply in court, and those that are subjudice and are likely to invite contempt charges. The leading case on the subject (Naresh V State of Maharashtra AIR 1967 SC 1.10.11.) decided by the Supreme Court holds that, where the ends of justice would be defeated by a public trial, a court has an inherent jurisdiction to hold the trial in camera. Further, the Supreme Court has held that the power to hold the trial in camera must include the power to hold a part of the trial in camera or to prohibit excessive publication of the proceedings held at such trial.

A number of statutes in India restrict, or empower or require the court to restrict, admission to certain proceedings before the court or publication of those proceedings. Time constraint does not permit to refer and catalogue all such statutes. A few of such specific statutory prohibitions are listed below:

(a) Section 228A of the Indian Penal Code, inserted by the Criminal Law Amendment Act, 1983 which relates to publication of the name of a victim of certain sexual offences, or of any matter in relation to any proceeding before a court with respect to such offence, without the permission of the court.

(b) Section 53 of the Indian Divorce Act, 1869, which provides that the whole or any part of the proceedings under the Act may be heard behind closed doors in certain circumstance. This Act, contrary to what its title would seem to suggest does not contain the entire Indian law of divorce, but is confined to matrimonial causes between persons professing the Christian religion.

(c) Section 14 of the Official Secrets Act, 1923 which provides that in addition to such powers as the courts may in this behalf have under any other law, a court holding a trial under the Act may exclude the public from proceedings under the Act, by an order made on the ground that the publication of any evidence given or any statement to be made in the course of the proceedings would be prejudicial to the safety of the State. But the sentence of the court must be passed in public.

(d) Section 33 of the Special Marriage Act, 1954 which requires that proceeding under the Act shall be conducted in camera, if either party desires or if the District Court so thinks fit to direct.

(e) Section 43 of the Parsi Marriage and Divorce Act, 1936, which provides that in every suit, preferred under the Act, the case shall be tried with in closed doors, should such be the wish of either of the parties.

(f) Section 22 of the Hindu Marriage Act, 1955 provides:

"22 (1) A proceeding under this Act shall be conducted in camera if either party so desires or if the court so thinks fit to do, and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court.

"(2) If any person prints or publishes any matter in contravention of the provisions contained in Sub- section (1) he shall be punishable with fine which may extend to one thousand rupees".

(g) Section 36 of the Children Act, 1960 (Confined to Union Territories), which prohibits the publication in any newspapers, magazine or news sheet of the report of any enquiry regarding a child under the Act in a manner which can lead to identification of the child, or the publication of any picture of the child, without the permission of the authority holding such enquiry.

(h) Section 17 of the Monopolies and Restrictive Trade Practices Act, 1969, which provides that while ordinarily the hearing of proceedings before the commission constituted under the Act shall be in public, the Commission may hear a proceeding or any part thereof in private and give directions as to the persons who may be present thereat, if the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any offence or matter or for any other reason. (Page 110 to 113, Press Law, P.M. Bakshi).

The Press Council of India, over the years has given guidelines on various issues relating to functioning of print media of the country. The print media has an obligation to abide by the ethics of journalism formulated by the Council and to follow the guidelines indicated by it in different spheres of media reporting by the Press. Although, Press Council of India Act as it stands now does not contain any provision to enforce compliance of the ethics and guidelines formulated by the Council presumably because it was expected by the Parliament that mandates and ethics of the Council being framed by the peer body of the print media and high representatives of people constituting the Council will be followed in letter and spirit. As such fond hope was belied in view of paradigm shift in functioning of media in our country and also elsewhere there has been felt need to amend the Act for giving more powers to Press Council of India the view also endorsed by the Apex Court and High Courts, for enforcing the guidelines and ethics of journalism formulated by the Council. The Council perceived that it should not be converted to a penal body but noting the shift in functioning of print media being dictated more by profit motive at the cost of fair journalistic practice and various other aberrations in its functioning, the Press Council has recommended for amendment of the Act for incorporating few provisions which, in the opinion of the Council will give more teeth in its adjudicatory function and may help it to effectively regulate the print media. Such proposal is pending consideration for being translated into action by appropriate amendment of the Act. Unfortunately, however, electronic media has no regulatory body constituted with its peers and other responsible personalities such as PCI. It will be only appropriate if the said media is also effectively regulated without any loss of time. Constitution of a media commission for in-depth study of various aspects of functioning of both electronic and print media of the country by such expert body for identifying the areas needed to be addressed and for evolving proper measures and mechanism to regulate media in India in a

more effective and pragmatic manner, is a need of the hour. Sooner such step is taken by the Government of India better would be for all of us.

Even though 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, 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 policy. The media, in my view, can operate quite effectively and in a responsible manner under the umbrella of fundamental right of freedom of speech and expression guaranteed to it and respected and recognised 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 destabilising 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 ethnic denominations, is extremely 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. In this context, it will be worthy to remember the comment of Justice Black in dissenting judgment in Dennis Versus US (1951) 341 US.

> **"There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise,**

free speech which is the strength of the Nation will be the cause of its destruction…"

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 functions or to demean the judiciary by undermining the faith in the 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 dignity of court is maintained more in restraint and forgiveness than in liberally punishing for contempt of court. From my own experience as a Judge of High Court and Supreme Court of India for about 22 years, I may state with confidence that Judges in India have very seldom been harsh and unsympathetic to a contemnor whenever a sincere apology was tendered to court. 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 losses its credibility and respect on account 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. They should take extreme care in ensuring that there is no distortion of facts or orders made by court in pending proceedings and fair reporting is made without any angularity. The law courts should also ensure by devising modalities so that relevant and undistorted fact and orders made in court cases are made available to media for proper reporting of the case. Occasional conflict between judiciary and media is only natural but it will be sad day if mutual respect between the two is lost or even eroded.

It is heartening that the Apex Court has taken initiative in holding Seminars and Workshops by involving Judges, lawyers, jurists and media persons so that issues causing disharmony between the two vital organs are properly identified and addressed in order to eliminate areas of conflict in the functioning of media vis a vis court. The topic selected for today's law lecture only points out the genuine concern of the members of legal fraternity, the priests in the temple of justice, to ensure that proper equation between the judiciary and media is maintained and not destabilised. I sincerely thank the organisers of today's lecture to give me an opportunity to share my views on a topic which is so close to my heart.

Namaskar

****