

Ethics and Media

Reasonable Restrictions on reporting matter subjudiced in Electronic Media

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A successful democratic country rests over four pillars democracy and the press or media is known as the fourth pillar. Ordinarily the freedom of press means and includes the right to print and publish without interference of the state or any public authority except such interference is authorized by the Constitution.

Primarily the freedom of press originated in England. In the exposition of famous statement of MELTON “give me the liberty to know, to utter and to argue freely according to conscience above all authorities.” It was a remark in 1662. The ambit of reasonable expectation in publishing matters subjudiced requires thought, conscience, legal approach, reformatory idea peeping into the deeper requirements of freedom and individual freedom of speech and expression. The prevailing profile cases like in voltage manner such as 2G cases of Telecom Deptt., Coalgate scam, Mining Scam and other highlighted corruption cases coupled with Criminal cases like Arushi murder case, Haryana Gang Rape Case, Bank Scams and other cases are burning issues in the present society. Electronic media, especially the T.V. Channels are requiring reasonable restrictions in their live telecast.

Art.19(2) of our Constitution empowers the state to impose by law reasonably restriction on the right conferred by the Constitution in the

above cited circumstances, it is well known that any right under the Constitution is limited to citizens and also cannot be claimed by non-citizen – the above observation made by the Hon’ble Supreme Court in AIR 1959 SC 395, 402, in **Sharma vs. Srikrishna**. It is here to say that restrictions would become unreasonable if it imposes a permanent ban on entry of each such newspaper. Similarly if it empowers administrative authority to impose ban without giving the person to be affected an opportunity of being-heard, then also it is unreasonable. Moreover the restriction to be valid must relate considerations mentioned as observed by Hon’ble Supreme Court in AIR 1958 SC 89 **Virendra vs. State of Punjab**. Again the discussion of reasonable expectation of the media come up before the Apex Court in AIR 1973 SC 106 **Bennett Coleman vs. Union of India** and also explained in AIR 1960 SC 633 Superintendent of Central **Prison vs. Rama Mohan Lohia**.

ARTICLE – 14

Article 14 of the Constitution of India provides – “The State shall not deny to any person of laws within the territory of India. It implies that an individual citizen, Govt. press or any organization enjoys equal fundamental rights in the eyes of law and no one has a right to transgress the rights of the others and the state has to protect it.

DAMAGES TO PEOPLE

Let us take an birds eye view in respect of a matter published and telecast live and its damages on people and society and above all the country at large. In this respect their lordship in **Manshi Ram vrs. Mela Ram**, AIR 1936, Lah 23, their Lordship quoted “what has been printed” may fall into many “heads”. Moreover a printed matters is generally the most permanent character and people are disposed to believe “what they generally see in print. Hence, where a libel is published in a newspaper the person defamed is entitled to substandard damages. The mere fact the proprietor of the paper had no knowledge of the publication of libel in his paper can not absolve him from civil liability.

Article 19(1) of the Indian Constitution declares that all citizens shall have the right to freedom of speech and expression. Though freedom of press is not explicitly guaranteed as fundamental right it is no longer in doubt that it is implicit in the freedom of speech and expression which have been stated by Dr. Ambedkar in the Constituent Assembly, and it has been pointed out in *Express Newspaper vrs. Union of India*, AIR 1958 SC 578 and in *Ramesh Thaper vrs. State of Madras*, AIR 1950 SC 124 (Para – 10).

ELECTRONICS MEDIA / T.V. COVERAGE

Recently the Supreme Court in its land mark Judgment on August 30, 2012 while upholding Terrorist AJMAL KASAB hang for 26/11, attacks the Hon’ble Bench, was critical of the manner in which T.V. channels put their commercial interest and jeopardized national security by 24x7 live telecast of the operations that helped terrorists in planning and holding on to their hideouts.

The Supreme Court which is the Highest Court of our country in a stinging rebuke to the

electronic media said driven by commercial interests, T.V. Channels, Telecast operations against 10 terrorists during 26/11 attacks on Mumbai. The Bench held “The shots and visuals that were shown live by T.V. channels could have also been shown after all the terrorists were neutralized and the security operations were over. But in that case the T.V. programmes would not have had the same shrill, scintillating and chilling effects and would not have shot up the TRP ratings of the channel”, a bench of justices Aftab Alam and C.K. Prasad said –

“It must, therefore be held that by covering live terrorist attack on Mumbai in the way it was done, Indian T.V. channels were not serving any National interest or social cause. On the contrary, they were acting in their own commercial interest, putting National security in jeopardy, it said.

After upholding death penalty to the lone surviving Pakistani Terrorist Ajmal Kasab, the Bench said the manner in which TV channels competed with each other in showing gory details of the mayhem and operations of security forces greatly harmed their argument that there should be self-regulations and no external censorship.

The Apex Court said that the character and credibility of the institution were tested in the times of emergency. “The coverage of Mumbai Terrorist attacks by the Mainstream Electronics Media has done much harm to the argument that any regulatory mechanism for the media must from within”.

The Bench said it was not possible to find out whether the security forces actually suffered any casualties or injury on account of the way their operation were telecast alive”. But it is beyond doubt that the way the operations were freely shown not only exceeding difficult but also dangerous and risky” it said.

“The reckless coverage of terrorist attacks by channels thus gives rise to situation where on the one hand, the terrorists were completely hidden from the security forces and they had no means to know their exact position or even the kind of fire arms and explosives they possessed and on the other hand, the position of security forces; their weapons and their operation movements were being watched by the collaborators across the border on T.V. screens and being communicated to the terrorists” it said.

The court further found from the transcripts of conversation between terrorists hold up in Taj Hotel, Oberoi Hotel and Nariman House and their handlers in Pakistan that the terror master minds were watching the live telecast and got important inputs about the positioning of security forces.

The Bench further said that there were countless instances to show that the collaborators were watching practically every movement of security forces which were trying to tackle the terrorist under relentless gunfire and throwing of grenades. Apart from the transcripts, we can take judicial notice on the fact that terrorist attacks at all the places in goriest details, were shown live on Indian TV from beginning to the end almost non-stop. All these channels were competing with each other in showing the latest development on a minute-to-minute basis; including the position and movement of security forces engaged in flushing out the terrorists” the court said.

The Hon’ble Supreme Court said no amount of justification citing right to freedom of expression could be acceptable as the manner of coverage was totally wrong.

Freedom of expression, like other freedoms under Article 19 of the Constitution is subject to reasonable restrictions. An action

tending to violate another person's right to life guaranteed under Art.21 of the Constitution or putting national security in jeopardy can never be justified by taking the plea of freedom of speech and expression.

It is pertinent to mention here that 10 channels which are working are for paid coverage and to promote a particular political party’s cause and the worst in public debate in the T.V. Channels are of lower, un-experienced and vested interest persons participating and some are paid coverage. The crime files are not be coverage as it is done and mostly it could be called as a Media Trial when the matter in subjudiced before the Courts or under trial. It is critical as observed by good citizens of Odisha that if anything is live on the channels about public interest, then the T.V. channels invite un-experienced people for a discussion whose who have no profound knowledge in the said field or the subject discussed and only to pose for their personal coverage to achieve a Hippocratic public image and it is felt that they loose no time to appear before the coverage and it is needless to sum up here that they had a vested interest.

Lastly the Hon’ble Supreme Court in AIR 2007 SC 493 **Ajay Goswami vrs. Union of India** and others directed for amendments in Press Council Act, 1978 as follows:

“Mandamus for legislation against obscenity.

No guidelines can be issued by court to newspapers regarding matter which may not be suitable for reading of minors.

Sufficient safeguards in terms of various legislature norms, regulations to protect the society in general and children in particular from obscene and prurient contents are available under Press Council Act.

Justice A.R. Lakshmanan observed – “One of the most controversial issue is balancing the need to protect society against the potential harm that may flow from obscene material and the need to ensure respect for freedom of expression and preserve a free flow information and idea in AIR 1973 SC 1461. His Holiness **Keshabananda Bharati vrs. State of Kerala & others** – “The fundamental rights and directive principles constitute the conscience of our Constitution to have balanced – The dignity of individual can be achieved. Thus the existing position in the Press Council Act, 1978 must be amended in view of above rulings.

The Press Council Act, 1978 provides objects and functions of the council U/s.13, 14 & 15 and there is a Press Council (procedure and enquiry) Regulations 1979 two acts and Regulations amendment is essential or else the society and its citizens will bear irreparable loss and agony. There are ample powers conferred

by Article 32 read with Article 142 to make orders which have effect of law by virtue of Art.141 and there is mandate to all authorities to act in aid of the orders of this court as provided in 144 of the Constitution.

That why, “where there is inaction by legislature it is duty of executive to fill the vacuum and where there is inaction even by Executive for whatever reasons the judiciary must step in as directed by the Apex Court in AIR 1998 SC 889, **Vineet Narayan vrs. Union of India**.

There must be reasonable restrictions in TV coverage for public good and social cause.

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