



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

COPC No.888 /2015
Decided on: 4.12.2015

Court on its own motion. ...Petitioner.
Versus
Kuldeep Chauhan. ...Respondent.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.
Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? ¹ Yes

For the Petitioner: Court on its own motion.

For the Respondent: Mr. N.B. Joshi and Mr. Vijay Arora,
Advocates.

Per Justice Rajiv Sharma, Judge (oral).

We had taken *suo motu* cognizance of the news item published in the daily Edition of the **Tribune** on 27.11.2015 whereby the notice was issued to the local correspondent Sh. Kuldeep Chauhan why contempt proceedings be not initiated against him.

2. The Court on 21.11.2015 had issued the following directions:

- a) The Chief Secretary is directed to ensure that no vehicle attached to the Hon'ble Judges is unnecessarily stopped or challenged.
- b) No vehicle except the vehicle of His Excellency Governor of Himachal Pradesh, Hon'ble Chief Minister and Hon'ble Chief Justice and public utility vehicles as provided under the Act shall ply between Shimla Club to Lift and between Railway Board Building to C.T.O.

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes

- c) Till further orders by this Court, the permits/passes issued to ply the vehicles between Shimla Club to Lift and between Railway Board Building to C.T.O shall remain suspended.
- d) Neither Additional District Magistrate nor Public Relation Officer, Shimla shall issue any permit to ply the vehicles either on sealed road or restricted road. The permits issued by these authorities shall not be valid till further orders by this Court.

3. Thereafter the matter was listed on 27.11.2015 whereby we had taken note of the news item, which appeared in the Tribune dated 22.11.2015 under the caption ***"Now, vehicles to keep off sealed roads in Shimla"*** and it was misquoted that the Judges/Chief Minister and Governor were entitled to use the sealed roads. The Court had categorically ordered on 21.11.2015 that the Governor, Chief Minister and Hon'ble Chief Justice only were entitled to use the sealed roads and the Judges of this Court were never permitted to use the sealed roads as quoted in the news item though clarified to some extent in the daily Edition dated 23.11.2015. The news item was published on 27.11.2015 under the caption ***"Harrowing time for commuters, others"*** and again it was misquoted that the Judges were permitted to use the sealed roads.

4. In view of this, show cause notice was issued to Mr. Kuldeep Chauhan, Local Correspondent of daily Edition of Tribune why contempt proceedings be not initiated against him.

5. Mr. Kuldeep Chauhan appeared before us and has filed an affidavit attested on 3.12.2015 extending unconditional and unqualified apology.

6. We were constrained to issue notice to the reporter of the Tribune for repeatedly committing mistakes by furnishing inaccurate and incorrect reports. The news items published by the medium of print have a great sway on the psyche of the public at large. The journalists must take necessary precautions, more particularly, while compiling the court proceedings. Ordinarily, oral observations made by the learned Advocate and Hon'ble Judges may not be carried in the news papers. We also hasten to add that Judges must accept healthy criticism of the judgments but the Judges should not be criticized. The inaccurate and incorrect news item is bound to prejudice the parties before the courts of law. Thus, reporting of the court proceedings

of the pending cases before the courts of law commands utmost responsibility and sincerity. We are of the view that the proceedings in the courts of law must be reported by the correspondents with legal background and accredited to the Courts to avoid misquoting of court proceedings.

7. Section 2 of the Contempt of Courts Act, 1971, defines expressions “contempt of Court”, “civil contempt” and criminal contempt” as under:

- “(a) “contempt of court” means civil contempt or criminal contempt;
- (b) “civil contempt” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;
- (c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which :-
 - (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court;
 - or
 - (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 - (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

8. According to Sections 3, 4 and 5, innocent publication and distribution of matter may not amount

to contempt, including fair and accurate reporting of the judicial proceedings and fair criticism of judicial act.

9. Article 129 of the Constitution of India reads as under:

“The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

10. Article 215 of the Constitution of India reads as under:

“Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

11. **Thomas Jefferson** stated as under:-

“Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.”

12. **George Washington** stated as under:

“For my part I entertain a high idea of the utility of periodical publications; insomuch as I could heartily desire, copies of ... magazines, as well as common Gazettes, might be spread through every city, town, and village in the United States. I consider such vehicles of knowledge more happily calculated than any other to preserve the liberty, stimulate the industry, and ameliorate the morals of a free and enlightened people.-

13. **Article One, Bill of Rights of the United States Constitution, 1789** reads as under:

"Congress shall make no law ... abridging the freedom of speech or of the press... -Article One, Bill of Rights of the United States Constitution, 1789."

14. **Henry Steel Commager**, preface to a history of the *New York Times*, 1951 reads as under:

Here is the living disproof of the old adage that nothing is as dead as yesterday's newspaper... This is what really happened, reported by a free press to a free people. It is the raw material of history; it is the story of our own times. -

15. In Renaissance Europe handwritten newsletters were circulated privately among merchants, passing along information about everything from wars and economic conditions to social customs and "Human Interest" features. The first printed forerunners of the newspaper appeared in Germany in the late 1400's in the form of news pamphlets or broadside.

16. The first newspaper in India was circulated in 1780 under the editorship of James Augustus Hickey. On May 30, 1826 **Udant Martand**, the first Hindi language newspaper was published in India from

Calcutta. The Urdu language newspaper **Urda Akhbar** was published in 1836.

17. In the book “ **A Treatise On the Constitutional Limitations**” by T.M. Colley, 1st Indian Edition 2005, the Author has defined “freedom of speech and press” to mean’

“The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for the publication, except so far as such publications, from their blasphemy, obscenity or scandalous character, may be a public offence, or as by their falsehood and malice and they may injuriously affect the private character of individuals. Or, to state, the same thing in somewhat different words, we understand liberty of speech and of the press to imply not only liberty to publish, but complete immunity for the publication, so long as it is not harmful in its character, when tested by such standards as the law affords. For these standards we must look to the common law rules which were in force when constitutional guarantees were established”. (Chapter XII – “Liberty of Speech and of the Press”, page 422).”

18. Author **Dr. Durga Dass Basu** in commentary on the Constitution of India, 8th Edition 2007 has illustrated the search for truth as under:

“The search for truth – Free speech is necessary to determine the truth. But what is truth, a postmodern skeptic might wonder. “The theory of our Constitution is that the best test of truth is the power of the thought to get itself accepted in

the competition of the market. On this view, truth is whatever most people say is. While the market place of ideas may not always accurately filter that which is empirically verifiable as true from false", the critical question is not how well truth will advance absolutely in conditions of freedom, but how well it will advance in condition of freedom as compared with some alternative set of condition". Those who hold to the idea that truth is a knowable if not always verifiable concept are even most robust in their claim that free expression is critical to finding truth. Related to truth is the idea that free expression is necessary to develop moral virtue. In a world of extreme moral relativism this may be but a facet of the "market place of ideas" metaphor, but however our moral compass as calibrated our ability to make moral choices - to opt for good and reject evil - requires that we be free to choose. The process of moral deliberation often involves the expression of views, only to reconsider them when others reply or react to the expressed sentiments."

19. The U.S. Supreme Court in *Thornhill* v. *Alabama* (1940) 310 US 88 has held as under:

"The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communications of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgement of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government."

20. In **Schneider** vs. **Irvington**, (1939) 308 US 147 (16), the U.S. Supreme Court has held that freedom of speech is the foundation of free Government.

21. In **Whitney** v. **California** 247 US 214, it was observed as under:

“Those who won our independence believed that the final end of the state was to make men free to develop their faculties. They believed liberty to be the secret of happiness and courage to be secret of liberty. They believed that the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile..... that public discussion is a political duty, and that this should be a fundamental principle of the American Government.”

22. In **Attorney General** v. **Times Newspaper Ltd.**, (1973) 3 All ER 54, it was observed as under:

“Freedom of expression, as learned writers have observed, has our broad social purposes to serve: (1) it helps individual to attain self fulfillment, (2) it assists in the discovery of truth (3) it strengthens the capacity of an individual in participating in decision-making; (4) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, fundamental principle involved here is the people’s right to know. Freedom of speech and expression should, therefore, receive a generous support from al those who believe in the participation of people in the administration.”

23. Historian **Bury** has observed that freedom of expression is “a supreme condition of mental and moral progress

24. U.S. Supreme Court in **Speiser** vs. **Randall**, (1958) 357 US 513 (530) has held that it is absolutely indispensable for the preservation of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities.

25. In **Cf. Walker** vs. **Birmingham**, (1967) 388 US 307, U.S. Supreme Court has held that in punishing contempt of Court, the State has to secure a balance between two equally important principles - need for freedom of expression and that for the independence and dignity of the judiciary and the due administration of justice.

26. In **Conway** vs. **Johan**, 331 US 367, Justice Douglas and Justice Murphy have held as under:

“This was strong language, intemperate language, and we assume, an unfair criticism. But a Judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him. The vehemence of the language used is not alone the measure of the power to punish for contempt. The fire which it kindles must constitute an

imminent, not merely a likely threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil. But the law of contempt is not made for the protection of Judges, who may be sensitive to the winds of public opinion. Judges, are supposed to be men of fortitude, able to thrive in a hardy climate. Conceivably a campaign could be so managed and so aimed at the sensibilities of a particular Judge and the matter pending before him as to cross the forbidden line”

In the same case, JUSTICE MURPHY, in his concurring opinion, said:

A free press lies at the heart of our democracy and its preservation is essential to the survival of liberty. Any inroad made upon the constitutional protection of a free press tends to undermine the freedom of all men to print and to read the truth.

In my view, the Constitution forbids a Judge from summarily punishing a newspaper editor for printing an unjust attack upon him or his method of dispensing justice. The only possible exception is in the rare instance where the attack might reasonably cause a real impediment to the administration of justice. Unscrupulous and vindictive criticism of the judiciary is regrettable. But Judges must not retaliate by a summary suppression of such criticism for they are bound by the command of the First Amendment. Any summary suppression of unjust criticism carries with it an ominous threat of summary suppression of all criticism. It is to avoid that threat that the First Amendment, as I view it, outlaws the summary contempt method of suppression.

Silence and a steady devotion to duty are the best answers to irresponsible criticism and those Judges who feel the need for giving a more visible demonstration of their feelings may take advantage of various laws passed for that purpose, which do not impinge upon a free press. The liberties guaranteed by the First Amendment, however, are too highly prized to be subject to the hazards of summary contempt procedure.

27. It was held in **McLeod vs. Aubyin**, (1899) AC 549 that the limits of bona fide criticism are transgressed when improper motives are attributed to judges and this cannot be viewed with placid equanimity.

28. Their Lordships of the Hon^{ble} Supreme Court in **Romesh Thappar vs. State of Madras**, AIR 1950 SC 124 have held as under:

[11] It is also worthy of note that the word "sedition" which occurred in Art. 13 (2) of the draft Constitution prepared by the Drafting Committee was deleted before the article was finally passed its Art.19 (2). In this connection it may be recalled that the Federal Court had, in defining sedition in **Niharendu Dutt v. Emperor**, 1942 F. C. R. 38 : (A. I. R. (29) 1942 F. C. 22 : 43 Cr. L. J. 504) held that "the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency", but the Privy Council overruled that decision and emphatically reaffirmed the view expressed in **Queen-Empress v. Bal Gangadhar Tilak**, 22 Bom. 112 to the effect that "the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small" **Emperor v. Sadashiv Narayan**, 74 I. A. 89 : (A.I.R. (34) 1947 P.C. 82 : 48 Cr. L.J. 791)."

Deletion of the word 'sedition' from the draft Art.13 (2), therefore, shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security or tend to overthrow the State. It is also significant that the corresponding Irish formula of "undermining the

public order or the authority of the State" (Art. 40 (6) (i) of the Constitution of Eire, 1937) did not apparently find favour with the framers of the Indian Constitution. Thus, very narrow and stringent limits have been set to permissible legislative abridgement of the right of free speech and expression and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible. A freedom of such amplitude might involve risks of a abuse. But the framers of the 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 of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits" (Quoted in *Near v. Minnesota* 283 U. S 607 at 717-8).

29. Their Lordships of the Hon'ble Supreme Court in ***Maneka Gandhi vs. Union of India***, (1978) 1

SCC 248 have held as under:

30. Now, it may be pointed out at the outset that it is not our view that a right which is not specifically mentioned by name can never be a fundamental right within the meaning of Article 19(1). It is possible that a right does not find express mention in any clause of Article 19(1) and yet it may be covered by some clause of that Article. Take for example, by way of illustration, freedom of press. It is a most cherished and valued freedom in a democracy: indeed democracy cannot survive without a free press. Democracy is based essentially on free debate and open discussion, for that is the only corrective of Governmental action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in

the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential. Manifestly, free debate and open discussion, in the most comprehensive sense, is not possible unless there is a free and independent press. Indeed the true measure of the health and vigour of a democracy is always to be found in its press. Look at its newspapers-do they reflect diversity of opinions and views, do they contain expression of dissent and criticism against governmental policies and actions, or do they obsequiously sing the praises of the government or lionize or deify the ruler. The newspapers are the index of the true character of the Government-whether it is democratic or authoritarian. It was Mr. Justice Potter Stewart who said : "Without an informed and free press, there cannot be an enlightened people". Thus freedom of the press constitutes one of the pillars of democracy and indeed lies at the foundation of democratic Organisation and yet it is not enumerated in so many terms as a fundamental right in Article 19(1), though there is a view held by some constitutional jurists that this freedom is too basic and fundamental not to receive express mention in Part III of the Constitution. But it has been held by this Court in several decisions, of which we may mention only three, namely, *Express Newspapers' case*, *Sakal Newspapers case* and *Bennett Coleman & Co's case*, that freedom of the press is part of the right of free speech and expression and is covered by Article 19 (1) (a). The reason is that freedom of the press is nothing but an aspect of freedom of speech and expression. It partakes of the same basic nature and character and is indeed an integral part of free speech and expression and perhaps it would not be incorrect to say that it is the same right applicable in relation to the press. So also, freedom of circulation is necessarily involved in freedom of speech and expression and is part of it and hence enjoys the protection of Article 19(1) (a). Vide *Ramesh Thappar v. State of Madras*(1). Similarly, the right to paint or sing or dance or to write poetry

or literature is also covered by Article 19(1) (a), because the common basic characteristic in all these activities is freedom of speech and expression, or to put it differently, each of these activities is an exercise of freedom of speech and expression. It would thus be seen that even if a right is not specifically named in Article 19(1), it may still be a fundamental right covered by some clause of that Article, if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right. It is not enough that a right claimed by the petitioner flows or emanates from a named fundamental right or that its existence is necessary in order to make the exercise of the named fundamental right meaningful and effective. Every activity which facilitates the exercise of a named fundamental right is not necessarily comprehended in that fundamental right nor can it be regarded as such merely because it may not be possible, otherwise to effectively exercise, that fundamental right. The contrary construction would lead to incongruous results and the entire scheme of Article 19(1) which confers different rights and sanctions different restrictions according to different standards depending upon the nature, of the right will be upset. What is necessary to be seen is, and that is the test which must be applied, whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right. If this be the correct test, as we apprehend it is, the right to, go abroad cannot in all circumstances be regarded as included in freedom of speech and expression. Mr. Justice Douglas said in *Kent v. Dulles* that "freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our Scheme of values." And

what the learned Judge, said in regard to freedom of movement in his country holds good in our country as well. Freedom of movement has been a part of our ancient tradition which always upheld the dignity of man and saw in him the embodiment of the Divine. The Vedic seers knew no limitations either in the locomotion of the human body or in the flight of the soul to higher planes of consciousness. Even in the post-Upanishadic period, followed by the Buddhist era and the early centuries after Christ, the people of this country went to foreign lands in pursuit of trade and business or in search of knowledge or with a view to shedding on others the light of knowledge imparted to them by their ancient sages and seers. India expanded outside her borders: her ships crossed the ocean and the fine superfluity of her wealth brimmed over to the East as well as to the West. Her cultural messengers and envoys spread her arts and epics in South East Asia and her religious conquered China and Japan and other Far Eastern countries and spread westward as far as Palestine and Alexandria. Even at the end of the last and the beginning of the present century, our people sailed across the seas to settle down in the African countries. Freedom of movement at home and abroad is a part of our heritage and, as already pointed out, it is a highly cherished right essential to the growth and development of the human personality and its importance cannot be over emphasised. But it cannot be said to be part of the right of free speech and expression. It is not of the same basic nature and character as freedom of speech and expression. When a person goes abroad, he may do so for a variety of reasons and it may not necessarily and always be for exercise of freedom of speech and expression. Every travel abroad is not an exercise of right of free speech and expression and it would not be correct to say that whenever there is a restriction on the right to go abroad, *ex necessitate* it involves violation of freedom of speech and expression. It is no doubt true that going abroad may be necessary in a given case for exercise of freedom of speech and expression, but that does not make it an integral part of the right of free

speech and expression. Every activity that may be necessary for exercise of freedom of speech and expression or that may facilitate such exercise or make it meaningful and effective cannot be elevated to the status of a fundamental right as if it were part of the fundamental right of free speech and expression. Otherwise, practically every activity would become part of some fundamental right or the other and the object of making certain rights only as fundamental rights with different permissible restrictions would be frustrated.

30. In **S. Mulgaokar**, in re (1978) 3 SCC 339, their Lordships of the Hon'ble Supreme Court have held the judiciary cannot be immune from criticism, but, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. Their Lordships have held as under:

[16] The judiciary cannot be immune from criticism, but, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. I am not one of those who think that an action for contempt of Court, which is discretionary, should be frequently or lightly taken. But at the same time, I do not think that we should abstain from using this weapon even when its use is needed to correct standards or behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for

improvement. But, when there appears some scheme and a design to bring about results which must damage confidence in our judicial system and demoralize Judges of the highest court by making malicious attack, any one interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed. I sincerely hope that my own undisguised perturbation at what has been taking place recently is unnecessary. One may be able to live in a world of Yogic detachment when unjustified abuses are hurled at one's self personally, but when the question is of injury to an institution, such as the highest Court of justice in the land, one cannot overlook its effects upon national honour and prestige in the comity of nations. Indeed, it becomes a matter deserving consideration of all serious minded people who are interested in seeing that democracy does not flounder or fail in our country.

If fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them. However, as we have not proceeded further in this case, I do not think it would be fair to characterize anything written or said in the India Express as really malicious or ill-intentioned and I do not do so. We have recorded no decision on that although the possible constructions on what was written there have been indicated above.

31. Their Lordships of the Hon'ble Supreme Court in ***Express Newspapers (P) Ltd. v. Union of India***, (1986) 1 SCC 133 have held as under:

[76] I would only like to stress that the freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various

issues facing the nation. It is necessary to emphasize and one must not forget that the vital importance of freedom of speech and expression involves the freedom to dissent to a free democracy like ours. Democracy relies on the freedom of the press. It is the inalienable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of individual liberty - freedom of speech, which our Court has always unfailingly guarded. I wish to add that however precious and cherished the freedom of speech is under Art. 19 (1) (a) , this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Art. 19 (2). That must be so because unrestricted freedom of speech and expression which includes the freedom of the press and is wholly free from restraints, amounts to uncontrolled licence which would lead to disorder and anarchy and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State.

32. Their Lordships of the Hon'ble Supreme Court in ***S. Rangarajan vs. P. Jagjivan Ram***, (1989) 2 SCC 574 have held as under:

[36] The democracy is a government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with Peoples participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value. What Walter Lippmann said in another context is relevant here :

When men act on the principle of intelligence, they go out to find the facts. . When they ignore it, they go inside

themselves and find out what is there. They elaborate their prejudice instead of increasing their knowledge.

33. Their Lordships of the Hon'ble Supreme Court in ***Secretary, Ministry of Information and Broadcasting, Government of India vs. Cricket Association of Bengal***, (1995) 2 SCC 161 have held as under:

[43] We may now summarise the law on the freedom of speech and expression under Article 19 (1 (a) as restricted by Article 19 (2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

34. Their Lordships of the Hon'ble Supreme Court in ***Union of India vs Motion Picture Association***, 1999 (6) SCC 150 have held as under:

[13] Undoubtedly, free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing view points, debating and forming one's own views and expressing them, are the basic indicia of a free society. This freedom alone makes it possible for people to formulate their own views and opinions on a proper basis and to exercise their social, economic and political rights in a free society in an informed manner. Restraints on this right, therefore, have been jealously watched by the Courts. Article 19 (2) spells out the various grounds on which this right to free speech and expression can be restrained. Thus in *Express Newspapers Pvt. Ltd. v. Union of India*, (1986) 1 SCC 133 this Court stressed that, "freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that the problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. . This right is one of the pillars of individual liberty-freedom of speech, which our Constitution has always unfailingly guarded. . however precious and cherished the freedom of speech is under Article 19 (1) (a) , this freedom is not absolute and unlimited at all times and all circumstances but is subject to the restrictions contained in Article 19 (2). " In *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574 this Court again observed : "the democracy is a government by the people via open discussion. The democratic form of government itself demands of its citizens an active and intelligent participation in the affairs of the community. . The democracy can neither work nor prosper unless people go out to share their views. " The importance of freedom of speech

and expression including freedom of the press has been repeatedly stressed by this Court in a number of decisions.

35. The right to know or right to information is basic facet of right to speech and expression. It is a fundamental right. However, reasonable restriction is always principled in the larger public interest. The right is required to be balanced. We would like to add a caveat that disclosure of information must be a rule and secrecy is an exception. We have now Right to Information Act, 2005

36. In the Indian Constitution liberty of speech and expression guaranteed under Article 19 (1) (a) brings within its ambit, the corresponding duty and responsibility and puts limitation on the exercise of the liberty.

37. In ***Narmada Bachao Andolan* vs. *Union of India*** (1999) 8 SCC 308, their Lordships of the Hon'ble Supreme Court have held as under:

[7] We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the Court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the Court and bring it into disrepute or ridicule. The right of criticising, in good

faith in private or public, a judgment of the Court cannot be exercised, with malice or by attempting to impair the administration of justice. Indeed, freedom of speech and expression is "life blood of democracy" but this freedom is subject to certain qualifications. An offence of scandalising the Court per se is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in a democratic society. It is not only an offence under the Contempt of Courts Act but is sui generis. Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without any malice, but no one can be permitted to distort orders of the Court and deliberately give a slant to its proceedings, which have the tendency to scandalise the Court or bring it to ridicule, in the larger interest of protecting administration of justice.

38. In **Arundhathi Roy**, in re (2002) 3 SCC 343, their Lordships of the Hon'ble Supreme Court have held that 'rule of law' is the basic rule of governance of any civilized policy. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever the person may be, however, high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be

respected and protected all costs. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. The freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. The law of contempt has been enacted to secure public respect and confidence in the judicial process. Their Lordships have held as under:

“[1] ‘Rule of Law’ is the basic rule of governance of any civilised democratic policy. Our constitutional scheme is based upon the concept of Rule of Law which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no-one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the Courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. After more than half a century of independence, the judiciary in the country is under a constant threat and being endangered from within and without. The need of the time is of restoring confidence

amongst the people for the independence of judiciary. Its impartiality and the glory of law has to be maintained, protected and strengthened. The confidence in the Courts of justice, which the people possess, cannot, in any way, be allowed to be tarnished, diminished or wiped out by contumacious behaviour of any person. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of Court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. In *In Re, Vinay Chandra Mishra* (the alleged contemner) (AIR 1995 SC 2348), this Court reiterated the position of law relating to the powers of contempt and opined that the judiciary is not only the guardian of the rule of law and third pillar but in fact the central pillar of a democratic State. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise the very corner-stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the Courts are entrusted with extraordinary powers of punishing those who indulge in acts, whether inside or outside the Courts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalising it. When the Court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the Court by creating distrust in its working, the edifice of the judicial system gets eroded.

[2] No person can flout the mandate of law of respecting the Courts for establishment of rule of law under the cloak of

freedoms of speech and expression guaranteed by the Constitution. Such a freedom is subject to reasonable restrictions imposed by any law. Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalising the authority of the institution of judiciary. Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. However, it must be remembered that the maintenance of dignity of Courts is one of the cardinal principles of rule of law in a democratic set up and any criticism of the judicial institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the Courts cannot be permitted when found having crossed the limits and has to be punished. This Court in *In Re, Harijai Singh and another* (1996 (6) SCC 466) has pointed out that a free and healthy Press is indispensable to the function of a true democracy but, at the same time, cautioned that the freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances. Lord Denning in his Book "Road to Justice" observed that Press is the watchdog to see that every trial is conducted fairly, openly and above board but the watchdog may sometimes break loose and has to be punished for misbehaviour. Frankfurter, J. in *Pennekamp v. Florida* [(1946) 90 Led 1295 at p. 1313] observed :

"If men, including Judges and journalists were angels, there would be no problems of contempt of Court. Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of Court is a safeguard not for Judges as persons but for the function which they exercise."

[3] The law of contempt has been enacted to secure public respect and confidence in the judicial process. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary and democratic set up is likely to be eroded which, if not checked, is sure to be disastrous for the society itself.”

39. Their Lordships of the Hon’ble Supreme Court in ***Radha Mohan Lal vs. Rajasthan High Court (Jaipur Bench)***, (2003) 3 SCC 427 have held that free expression cannot be equated or confused with a licence to make unfounded and irresponsible allegations against the judiciary. Their Lordships have held as under:

“[10] The liberty of free expression as was sought to be contended by Mr. Sualal Yadav cannot be equated or confused with a licence to make unfounded and irresponsible allegations against the judiciary. The imputation that was made was clearly contemptuous. The effect is lowering of the dignity and authority of the Court and an affront to the majesty of justice.”

40. Their Lordships of the Hon’ble Supreme Court in ***M.P. Lohia vs State of W.B. and another***, (2005) 2 SCC 686 have deprecated the practice and cautioned the publisher, editor and the journalist who were responsible for the article against indulging in such trial by media when the issue was *sub judice*.

41. In **Rajendra Sail vs. M.P. High Court Bar Association**, (2005) 6 SCC 109, their Lordships of the Hon'ble Supreme Court have held that criticism likely to interfere with due administration of justice or undermine confidence that public reposes in courts of law as courts of justice, ceases to be fair and reasonable criticism and amounts to criminal contempt of court. Their Lordships have further held that in the free marketplace of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the judges or the courts in relation to judicial matters. No system of justice can tolerate such unbridled licence. Their Lordships have further held that the reach of the media, in the present times of 24 hour channels, is to almost every nook and corner of the world. Thus, the power and reach of the media, both print as well as electronic is tremendous. It has to be exercised in the interest of the public good. For rule of

law and orderly society, a free responsible press and independent judiciary are both indispensable, therefore, protected. While the media can, in the public interest, resort to reasonable criticism of a judicial act or the judgment of a court for public good or report any such statements, it should refrain from casting scurrilous aspersions on, or impute improper motives or personal bias to the judge. Their Lordships have held as under:

[13] In Aswini Kumar Ghose and Anr. v. Arabinda Bose and Anr. it was held that the Supreme Court is never over-sensitive to public criticism; but when there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity. The path of criticism is a public way: the wrong-headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

[14] In Brahma Prakash Sharma and Ors. v. The State of U. P. 3 it was held that, if the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt is a wrong done to the public. It will be injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon

the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law.

[15] In *Perspective Publications Pvt. Ltd. and Anr. v. The State of Maharashtra*, a bench of three judges after referring to the leading cases on the subject held that " (1) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice. (2) It is open to everyone 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 a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men". (3) A distinction must be made between a mere libel of defamation of a Judge and what amounts to a contempt of the court. The test in each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that it will be punishable as contempt. Alternatively the test will be whether the wrong is done to the Judge personally or it is done to the public. The publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. "

[19] In *P. N. Duda v. P. Shiv Shanker and ors.* 2 it has been held that administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office i. e. to defend and uphold the Constitution and the laws without fear and favour. Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of the Judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticized, motives to the Judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or Judges should be welcome so long as such criticism does not impair or hamper the administration of justice. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court.

[20] In *Re. Roshan Lal Ahuja*, a three judge bench held, Judgments of the court are open to criticism. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice or attempting to impair the administration of justice and made in good faith in proper language don't attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of the judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to uphold their dignity and the majesty of law. No litigant can be permitted to overstep the limits of fair, bona

fide and reasonable criticism of a judgment and bring the courts generally in disrepute or attribute motives to the Judges rendering the judgment. Perversity, calculated to undermine the judicial system and the prestige of the court, cannot be permitted for otherwise the very foundation of the judicial system is bound to be undermined and weakened and that would be bad not only for the preservation of rule of law but also for the independence of judiciary. Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the Judges or the courts in relation to judicial matters. No system of justice can tolerate such an unbridled licence. Of course "justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men", but the members of the public have to abstain from imputing improper motives to those taking part in the administration of justice and exercise their right of free criticism without malice or in any way attempting to impair to administration of justice and refrain from making any comment which tends to scandalize the court in relation to judicial matters. If a person committing such gross contempt of court were to get the impression that he will get off lightly it would be a most unfortunate state of affairs. Sympathy in such a case would be totally misplaced, mercy has no meaning. His action calls for deterrent punishment to that, it also serves as an example to others and there is no repetition of such contempt by any other person.

[24] In re, Arundhati Roy the Court held, fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which,

if not checked, would destroy the institution itself. Litigant losing in the court would be the first to impute motives to the Judges and the institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic set-up i. e. judiciary.

[31] The reach of media, in present times of 24 hours channels, is to almost every nook and corner of the world. Further, large number of people believe as correct which appears in media, print or electronic. It is also necessary to always bear in mind that the judiciary is the last resort of redressal for resolution of disputes between State and subject, and high and low. The confidence of people in the institute of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of rule of law. Therefore, any act which has such tendency deserves to be firmly curbed. For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected.

[32] The judgments of courts are public documents and can be commented upon, analyzed and criticized, but it has to be in dignified manner without attributing motives. Before placing before public, whether on print or electronic media, all concerned have to see whether any such criticism has crossed the limits as aforesaid and if it has, then resist every temptation to make it public. In every case, it would be no answer to plead that publication, publisher, editor or other concerned did not know or it was done in haste. Some mechanism may have to be devised to check the publication which has the tendency to undermine the institution of judiciary.

[35] Regarding the institution like judiciary which cannot go public, media can consider having an internal mechanism to prevent these types of publications. There can be an efficient and stringent mechanism to scrutinize the news reports pertaining to such institutions which because of the nature of their office cannot reply to publications which

have tendency to bring disrespect and disrepute to those institutions. As already noted such publications are likely to be believed as true. Such a mechanism can be the answer to pleas like the one in the present case by editor, printer and publisher and correspondent that either they did not know or it was done in a hurry and similar pleas and defences.

[37] While the media can, in the public interest, resort to reasonable criticism of a judicial act or the judgment of a court for public good or report any such statements; it should refrain from casting 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. It should be kept in mind that Judges do not defend their decisions in public and if citizens disrespect the persons laying down the law, they cannot be expected to respect the law laid down by them. The only way the Judge can defend a decision is by the reasoning in the decision itself and it is certainly open to being criticized by anyone who thinks that it is erroneous.

[42] The issue as to whether the alleged statements amount to contempt or not does not present any difficulty in the present case. If the conclusions reached by the high Court are correct, there can be little doubt that it is serious case of scandalizing the court and not a case of fair criticism of a judgment. Undoubtedly, judgments are open to criticism. No criticism of a judgment, however vigorous, can amount to contempt of Court, provided it is kept within the limits of reasonable courtesy and good faith. Fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts.

[44] When there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity. If the

criticism is likely to interfere with due administration of justice or undermine the confidence which the public reposes in the courts of law as Courts of justice, the criticism would cease to be fair and reasonable criticism but would scandalise Courts and substantially interfere with administration of justice. Having perused the record, we are unable to accept the contention urged on behalf of Mr. Rajendra Sail that on facts the conclusions arrived at by the high Court are not sustainable. Once this conclusion is reached, clearly the publication amounts to a gross contempt of court. It has serious tendency to undermine the confidence of the society in the administration.

42. Their Lordships of the Hon'ble Supreme Court in ***Government of Andhra Pradesh and others vs. P. Laxmi Devi***, (2008) 4 SCC 720 have adopted and reiterated the principle of **American** law as under:

[82] However, when it came to civil liberties, Mr. Justice Holmes was an activist Judge. Thus, in *Schenck vs. U.S.* 249 U.S. 47 (1919) he laid down his famous "clear and present danger" test for deciding whether restriction on free speech was constitutionally valid. As Mr. Justice Holmes observed, the question in every case is "whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils that Congress has a right to prevent".

[97] Why is it that the Courts both in India and in America have taken an activist approach in upholding the civil liberties and rights of the citizens? In our opinion, this is because freedom and liberty is essential for progress, both economic and social. Without freedom to speak, freedom to write, freedom to think, freedom to experiment, freedom to criticize (including criticism of the Government) and freedom to dissent there can be no progress.

43. Their Lordships of the Hon'ble Supreme Court in ***Sidhartha Vashisht alias Manu Sharma vs. State (NCT of Delhi)***, (2010) 6 SCC 1 have held that despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, is to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Their Lordships have held as under:

“[147] There is danger, of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which out rightly hold the suspect or the

accused guilty even before such an order has been passed by the Court.

[148] Despite the significance of the print and electronic media in the present day, it is not only desirable but least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

[149] In the present case, certain articles and news items appearing in the newspapers immediately after the date of occurrence, did cause certain confusion in the mind of public as to the description and number of the actual assailants/suspects. It is unfortunate that trial by media did, though to a very limited extent, affect the accused, but not tantamount to a prejudice which should weigh with the Court in taking any different view. The freedom of speech protected under Article 19 (1) (a) of the Constitution has to be carefully and cautiously used, so as to avoid interference in the administration of justice and leading to undesirable results in the matters sub judice before the Courts.

[151] Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution [Anukul Chandra Pradhan V. Union Of India & Ors., 1996 6 SCC 354]. It is essential for the maintenance of dignity of Courts and is one of the cardinal principles of rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice.

303 (11). Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible.”

44. Their Lordships of the Hon'ble Supreme Court in ***Indirect Tax Practitioners' Association*** vs. ***R.K. Jain***, (2010) 8 SCC 281 have held that criticism becomes contempt when it is done with ill-motive or there is deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons. Ordinarily, court would not use its power of contempt to silence criticism unless criticism of judicial institutions transgresses all limits of decency and fairness, or there is total lack of objectivity, or there is deliberate attempt to denigrate the institution. Their Lordships have held as under:

[18] Before adverting to the second and more important issue, we deem it necessary to remind ourselves that freedom of speech and expression has always been considered as the most cherished right of every human being. Justice Brennan of U.S. Supreme Court, while dealing with a case of libel - *New York Times Company v. L.B. Sullivan* observed that "it is a prized privilege to speak one's mind, although not always with perfect good taste, on all public institutions and this

opportunity should be afforded for vigorous advocacy no less than abstract discussion.

[22] In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, the freedom of speech and expression and freedom to speak one's mind have always been respected. After independence, the Courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons.

23. Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power. The judgments of this Court in *Re S. Mulgaokar*, (1978) 3 SCC 339 and *P.N. Duda v. P. Shiv Shanker*, 1988 3 SCC 167 are outstanding examples of this attitude and approach."

45. Their Lordships of the Hon'ble Supreme Court in *Sanjoy Narayan, Editor-in-Chief, Hindustan Times and others* vs. *High Court of Allahabad*, (2011) 13 SCC 155 have held that the judiciary also must be

magnanimous in accepting an apology when filed through an affidavit duly sworn, conveying remorse for such publication. Their Lordships have held as under:

[11] The judiciary also must be magnanimous in accepting an apology when filed through an affidavit duly sworn, conveying remorse for such publication. This indicates that they have accepted their mistake and fault. This Court has also time and again reiterated that this Court is not hypersensitive in matter relating to Contempt of Courts Act and has always shown magnanimity in accepting the apology. Therefore, we accept the aforesaid unqualified apology submitted by them and drop the proceeding.

46. Their Lordships of the Hon'ble Supreme Court in **Ramlila Maidan Incident**, In Re (2012) 5 SCC 1 have held compared the freedom of speech and freedom of expression and freedom to assemble between Indian Constitution and U.S. Constitution as under:

[2] It appears justified here to mention the First Amendment to the United States (US) Constitution, a bellwether in the pursuit of expanding the horizon of civil liberties. This Amendment provides for the freedom of speech of press in the American Bill of Rights. This Amendment added new dimensions to this right to freedom and purportedly, without any limitations. The expressions used in wording the Amendment have a wide magnitude and are capable of liberal construction. It reads as under :

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or

the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[3] The effect of use of these expressions, in particular, was that the freedom of speech of press was considered absolute and free from any restrictions whatsoever. Shortly thereafter, as a result of widening of the power of judicial review, the US Supreme Court preferred to test each case on the touchstone of the rule of 'clear- and-present-danger'. However, application of this rule was unable to withstand the pace of development of law and, therefore, through its judicial pronouncements, the US Supreme Court applied the doctrine of 'balancing of interests'. The cases relating to speech did not simply involve the rights of the offending speaker but typically they presented a clash of several rights or a conflict between individual rights and necessary functions of the Government. Justice Frankfurter often applied the above-mentioned Balancing Formula and concluded that "while the court has emphasized the importance of 'free speech', it has recognized that free speech is not in itself a touchstone. The Constitution is not unmindful of other important interests, such as public order, if free expression of ideas is not found to be the overbalancing considerations."

[4] The 'balancing of interests' approach is basically derived from Roscoe Pound's theories of social engineering. Pound had insisted that his structure of public, social and individual interests are all, in fact, individual interests looked at from different points of view for the purpose of clarity. Therefore, in order to make the system work properly, it is essential that when interests are balanced, all claims must be translated into the same level and carefully labelled. Thus, a social interest may not be balanced against individual interest, but only against another social interest. The author points out that throughout the heyday of the clear-and-present-danger and preferred position doctrines, the language of balancing, weighing or accommodating interests was employed as an integral part of the libertarian position.

[Freedom of Speech: The Supreme Court and Judicial Review, by Martin Shapiro, 1966]

[5] Even in the United States there is a recurring debate in modern First Amendment Jurisprudence as to whether First Amendment rights are 'absolute' in the sense that the Government may not abridge them at all or whether the First Amendment requires the 'balancing of competing interests' in the sense that free speech values and the Government's competing justification must be isolated and weighted in each case. Although the First Amendment to the American Constitution provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of the constitutional Government to survive. If it is to survive, it must have power to protect itself against unlawful conduct and under some circumstances against incitements to commit unlawful acts. Freedom of speech, thus, does not comprehend the right to speak on any subject at any time.

[7] In contradistinction to the above approach of the US Supreme Court, the Indian Constitution spells out the right to freedom of speech and expression under Article 19(1)(a). It also provides the right to assemble peacefully and without arms to every citizen of the country under Article 19(1)(b). However, these rights are not free from any restrictions and are not absolute in their terms and application. Articles 19(2) and 19(3), respectively, control the freedoms available to a citizen. Article 19(2) empowers the State to impose reasonable restrictions on exercise of the right to freedom of speech and expression in the interest of the factors stated in the said clause. Similarly, Article 19(3) enables the State to make any law imposing reasonable restrictions on the exercise of the right conferred, again in the interest of the factors stated therein.

[8] In face of this constitutional mandate, the American doctrine adumbrated in Schenck's case cannot be imported and applied. Under our Constitution, this right is not an

absolute right but is subject to the above-noticed restrictions. Thus, the position under our Constitution is different.

[10] The fundamental right enshrined in the Constitution itself being made subject to reasonable restrictions, the laws so enacted to specify certain restrictions on the right to freedom of speech and expression have to be construed meaningfully and with the constitutional object in mind. For instance, the right to freedom of speech and expression is not violated by a law which requires that name of the printer and publisher and the place of printing and publication should be printed legibly on every book or paper.

[11] Thus, there is a marked distinction in the language of law, its possible interpretation and application under the Indian and the US laws. It is significant to note that the freedom of speech is the bulwark of democratic Government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like. With the development of law in India, the right to freedom of speech and expression has taken within its ambit the right to receive information as well as the right of press.

[12] In order to effectively consider the rival contentions raised and in the backdrop of the factual matrix, it will be of some concern for this Court to examine the constitutional scheme and the historical background of the relevant Articles relating to the right to freedom of speech and expression in India. The framers of our Constitution, in unambiguous terms, granted the right to freedom of speech and expression and the right to assemble peaceably and without arms. This gave to the citizens of this country a very valuable right, which is the essence of any democratic system.

There could be no expression without these rights. Liberty of thought enables liberty of expression. Belief occupies a place higher than thought and expression. Belief of people rests on liberty of thought and expression. Placed as the three angles of a triangle, thought and expression would occupy the two corner angles on the baseline while belief would have to be placed at the upper angle. Attainment of the preambled liberties is eternally connected to the liberty of expression. (Ref. Preamble, The Spirit and Backbone of the Constitution of India, by Justice R.C. Lahoti). These valuable fundamental rights are subject to restrictions contemplated under Articles 19(2) and 19(3), respectively. Article 19(1) was subjected to just one amendment, by the Constitution (44th Amendment) Act, 1979, vide which Article 19(1)(f) was repealed. Since the Parliament felt the need of amending Article 19(2) of the Constitution, it was substituted by the Constitution (First Amendment) Act, 1951 with retrospective effect. Article 19(2) was subjected to another amendment and vide the Constitution (Sixteenth Amendment) Act, 1963, the expression "sovereignty and integrity of India" was added. The pre-amendment Article had empowered the State to make laws imposing reasonable restrictions in exercise of the rights conferred under Article 19(1)(a) in the interest of the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. To introduce a more definite dimension with regard to the sovereignty and integrity of India, this Amendment was made. It provided the right spectrum in relation to which the State could enact a law to place reasonable restrictions upon the freedom of speech and expression.

47. Their Lordships of the Hon'ble Supreme Court in ***Sahara India Real Estate Corporation Limited and others*** vs. ***Securities and Exchange***

Board of India and another, (2012) 10 SCC 603 have held that media by virtue of section 4 of Contempt of Courts Act, 1971 is entitled to publish a fair and accurate report. Their Lordships have also held that guidelines for reporting cannot be framed across the board and what constitutes an offending publication would depend on the decision of the court on case to case basis. Their Lordships have further held that excessive prejudicial publicity leading to usurpation of functions of the court not only interferes with administration of justice which is sought to be protected under Article 19(2), it also prejudices or interferes with a particular legal proceedings. In such case, superior courts are duty-bound under inherent jurisdiction to protect the presumption of innocence which is now recognized by the Court as a human right. Their Lordships have further held that no single right taken individually is absolute and Court's duty is to strike a proper balance in a given situation where one right conflicts with another. Their Lordships have further held that freedom of expression is one of the most cherished

values of a free democratic society. Media is an instrument of free expression, however, not absolute and subject to reasonable restrictions under Article 19 (2) of the Constitution of India. Their Lordships have held as under:

[17] Protecting speech is the US approach. The First Amendment does not tolerate any form of restraint. In US, unlike India and Canada which also have written Constitutions, freedom of the press is expressly protected as an absolute right. The US Constitution does not have provisions similar to Section 1 of the Charter Rights under the Canadian Constitution nor is such freedom subject to reasonable restrictions as we have under Article 19(2) of the Indian Constitution. Therefore, in US, any interference with the media freedom to access, report and comment upon ongoing trials is prima facie unlawful. Prior restraints are completely banned. If an irresponsible piece of journalism results in prejudice to the proceedings, the legal system does not provide for sanctions against the parties responsible for the wrongdoings. Thus, restrictive contempt of court laws are generally considered incompatible with the constitutional guarantee of free speech. However, in view of cases, like O.J. Simpson, Courts have evolved procedural devices aimed at neutralizing the effect of prejudicial publicity like change of venue, ordering re-trial, reversal of conviction on appeal (which, for the sake of brevity, is hereinafter referred to as "neutralizing devices"). It may be stated that even in US as of date, there is no absolute rule against "prior restraint" and its necessity has been recognized, albeit in exceptional cases [see Near v. Minnesota, 283 US 697] by the courts evolving neutralizing techniques.

[18] In 1993, Chief Justice William Rehnquist observed: "constitutional law is now so firmly grounded in so many

countries, it is time that the US Courts begin looking at decisions of other constitutional courts to aid in their own deliberative process".

[19] Protecting Justice is the English approach. Fair trials and public confidence in the courts as the proper forum for settlement of disputes as part of the administration of justice, under the common law, were given greater weight than the goals served by unrestrained freedom of the press. As a consequence, the exercise of free speech respecting ongoing court proceedings stood limited. England does not have a written constitution. Freedoms in English law have been largely determined by Parliament and Courts. However, after the judgment of ECHR in the case of *Sunday Times v. United Kingdom*, 1979 2 EHRR 245, in the light of which the English Contempt of Courts Act, 1981 (for short "the 1981 Act") stood enacted, a balance is sought to be achieved between fair trial rights and free media rights vide Section 4(2). Freedom of speech (including free press) in US is not restricted as under Article 19(2) of our Constitution or under Section 1 of the Canadian Charter. In England, Parliament is supreme. Absent written constitution, Parliament can by law limit the freedom of speech. The view in England, on interpretation, has been and is even today, even after the Human Rights Act, 1998 that the right of free speech or right to access the courts for the determination of legal rights cannot be excluded, except by clear words of the statute. An important aspect needs to be highlighted. Under Section 4(2) of the 1981 Act, courts are expressly empowered to postpone publication of any report of the proceedings or any part of the proceedings for such period as the court thinks fit for avoiding a substantial risk of prejudice to the administration of justice in those proceedings. Why is such a provision made in the Act of 1981? One of the reasons is that in Section 2 of the 1981 Act, strict liability has been incorporated (except in Section 6 whose scope has led to conflicting decisions on the question of intention). The basis of the strict liability contempt under the 1981 Act is the publication of "prejudicial" material. The

definition of publication is also very wide. It is true that the 1981 Act has restricted the strict liability contempt to a fewer circumstances as compared to cases falling under common law. However, contempt is an offence sui generis. At this stage, it is important to note that the strict liability rule is the rule of law whereby a conduct or an act may be treated as contempt of court if it tends to interfere with the course of justice in particular legal proceedings, regardless of intent to do so. Sometimes, fair and accurate reporting of the trial (say a murder trial) would nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trials. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trials. Thus, postponement order not only safeguards fairness of the later or connected trials, it prevents possible contempt. That seems to be the underlying reason behind enactment of Section 4(2) of the 1981 Act. According to Borrie & Lowe on the "Law of Contempt", the extent to which prejudgment by publication of the outcome of a proceedings (referred to by the House of Lords in Sunday Times's case) may still apply in certain cases. In the circumstances to balance the two rights of equal importance, viz., right to freedom of expression and right to a fair trial, that Section 4(2) is put in the 1981 Act. Apart from balancing it makes the media know where they stand in the matters of reporting of court cases. To this extent, the discretion of courts under common law contempt has been reduced to protect the media from getting punished for contempt under strict liability contempt. Of course, if the court's order is violated, contempt action would follow.

[20] In the case of *Home Office v. Harman*, 1983 1 AC 280 the House of Lords found that the counsel for a party was furnished documents by the opposition party during inspection on the specific undertaking that the contents will not be disclosed to the public. However, in violation of the said undertaking, the counsel gave the papers to a third party, who published them. The counsel was held to be in contempt

on the principle of equalization of the right of the accused to defend himself/herself in a criminal trial with right to negotiate settlement in confidence. [See also *Globe and Mail v. Canada (Procureur g n ral)*, 2008 QCCA 2516

[21] The Continental Approach seeks to protect personality. This model is less concerned with the issue of fair trial than with the need for safeguarding privacy, personal dignity and presumption of innocence of trial participants. The underlying assumption of this model is that the media coverage of pending trials might be at odds not only with fairness and impartiality of the proceedings but also with other individual and societal interests. Thus, narrowly focussed prior restraints are provided for, on either a statutory or judicial basis. It is important to note that in the common-law approach the protection of sanctity of legal proceedings as a part of administration of justice is guaranteed by institution of contempt proceedings. According to Article 6(2) of the European Convention of Human Rights, presumption of innocence needs to be protected. The European Courts of Human Rights has ruled on several occasions that the presumption of innocence should be employed as a normative parameter in the matter of balancing the right to a fair trial as against freedom of speech. The German Courts have accordingly underlined the need to balance the presumption of innocence with freedom of expression based on employment of the above normative parameter of presumption of innocence. France and Australia have taken a similar stance. Article 6(2) of the European Convention of Human Rights imposes a positive obligation on the State to take action to protect the presumption of innocence from interference by non-State actors. However, in a catena of decisions, the ECHR has applied the principle of proportionality to prevent imposition of overreaching restrictions on the media. At this stage, we may state, that the said principle of proportionality has been enunciated by this Court in *Chintaman Rao v. The State of Madhya Pradesh*, 1950 SCR 759.

[22] The Canadian Approach: Before Section 1 of Canadian Charter of Rights, the balance between fair trial and administration of justice concerns, on the one hand, and freedom of press, on the other hand, showed a clear preference accorded to the former. Since the Charter introduced an express guarantee of "freedom of the press and other media of communication", the Canadian Courts reformulated the traditional sub judice rule, showing a more tolerant attitude towards trial-related reporting [see judgment of the Supreme Court of Canada in *Dagenais v. Canadian Broadcasting Corp.*, 1994 3 SCR 835 which held that a publication ban should be ordered when such an order is necessary to prevent a serious risk to the proper administration of justice when reasonably alternative measures like postponement of trial or change of venue will not prevent the risk (necessity test); and that salutary effects of the publication bans outweigh the deleterious effects on the rights and interests of the parties and the public, including the effect on the right to free expression and the right of the accused to open trial (i.e. proportionality test)]. The traditional common law rule governing publication bans that there be real and substantial risk of interference with the right to a fair trial emphasized the right to a fair trial over the free expressions interests of those affected by the ban. However, in the context of post-Charter situation, the Canadian Supreme Court has held that when two protected rights come in conflict, Charter principles require a balance to be achieved that fully respects both the rights. The Canadian Courts have, thus, shortened the distance between the US legal experience and the common-law experiences in other countries. It is important to highlight that in *Dagenais*, the publication ban was sought under common law jurisdiction of the Superior Court and the matter was decided under the common law rule that the Courts of Record have inherent power to defer the publication. In *R. v. Mentuck*, 2001 3 SCR 442 that *Dagenais* principle was extended to the presumption of openness and to duty of court to balance the two rights. In both the above

cases, Section 2(b) of the Charter which deals with freedom of the press was balanced with Section 1 of the Charter. Under the Canadian Constitution, the Courts of Record (superior courts) have retained the common law discretion to impose such bans provided that the discretion is exercised in accordance with the Charter demands in each individual case.

[23] The Australian Approach: The Australian Courts impose publication bans through the exercise of their inherent jurisdiction to regulate their own proceedings. In Australia, contempt laws deal with reporting of court proceedings which interfere with due administration of justice. Contempt laws in Australia embody the concept of "sub judice contempt" which relates to the publication of the material that has a tendency to interfere with the pending proceedings.

[24] The New Zealand Approach: It recognizes the Open Justice principle. However, the courts have taken the view that the said principle is not absolute. It must be balanced against the object of doing justice. That, the right to freedom of expression must be balanced against other rights including the fundamental public interest in preserving the integrity of justice and the administration of justice.

Indian Approach to prior restraint

(i) Judicial decisions

[25] At the outset, it may be stated that the Supreme Court is not only the sentinel of the fundamental rights but also a balancing wheel between the rights, subject to social control. Freedom of expression is one of the most cherished values of a free democratic society. It is indispensable to the operation of a democratic society whose basic postulate is that the government shall be based on the consent of the governed. But, such a consent implies not only that the consent shall be free but also that it shall be grounded on adequate information, discussion and aided by the widest possible dissemination of information and opinions from diverse and antagonistic sources. Freedom of expression which includes freedom of the press has a capacious content and is not restricted to expression of thoughts and ideas

which are accepted and acceptable but also to those which offend or shock any section of the population. It also includes the right to receive information and ideas of all kinds from different sources. In essence, the freedom of expression embodies the right to know. However, under our Constitution no right in Part III is absolute. Freedom of expression is not an absolute value under our Constitution. It must not be forgotten that no single value, no matter exalted, can bear the full burden of upholding a democratic system of government. Underlying our Constitutional system are a number of important values, all of which help to guarantee our liberties, but in ways which sometimes conflict. Under our Constitution, probably, no values are absolute. All important values, therefore, must be qualified and balanced against, other important, and often competing, values. This process of definition, qualification and balancing is as much required with respect to the value of freedom of expression as it is for other values. Consequently, free speech, in appropriate cases, has got to correlate with fair trial. It also follows that in appropriate case one right [say freedom of expression] may have to yield to the other right like right to a fair trial. Further, even Articles 14 and 21 are subject to the test of reasonableness after the judgment of this Court in the case of *Maneka Gandhi v. Union of India*, 1978 1 SCC 248.

[35] Section 2 defines "contempt", "civil contempt" and "criminal contempt". In the context of contempt on account of publications which are not fair and accurate publication of court proceedings, the relevant provisions are contained in Sections 4 and 7 whereas Section 13 is a general provision which deals with defences. It will be noticed that Section 4 deals with "report of a judicial proceeding". A person is not to be treated as guilty of contempt if he has published such a report which is fair and accurate. Section 4 is subject to the provisions of Section 7 which, however, deals with publication of "information" relating to "proceedings in chambers". Here the emphasis is on "information" whereas in Section 4, emphasis is on "report of a judicial proceeding". This

distinction between a "report of proceedings" and "information" is necessary because Section 7 deals with proceedings in camera where there is no access to the media. In this connection, the provisions of Section 13 have to be borne in mind. The inaccuracy of reporting of court proceedings will be contempt only if it can be said on the facts of a particular case, to amount to substantial interference with the administration of justice. The reason behind Section 4 is to grant a privilege in favour of the person who makes the publication provided it is fair and accurate. This is based on the presumption of "open justice" in courts. Open justice permits fair and accurate reports of court proceedings to be published. The media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. As stated above, sometimes, fair and accurate reporting of the trial (say a murder trial) would nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trials. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trials. Thus, postponement order not only safeguards fairness of the later or connected trials, it prevents possible contempt by the Media.

43. Further, we must also keep in mind the words of Article 19(2) "in relation to contempt of court". At the outset, it may be stated that like other freedoms, clause 1(a) of Article 19 refers to the common law right of freedom of expression and does not apply to any right created by the statute (see page 275 of Constitution of India by D.D. Basu, 14th edition). The above words "in relation to" in Article 19(2) are words of widest amplitude. When the said words are read in relation to contempt of court, it follows that the law of contempt is treated as reasonable restriction as it seeks to prevent administration of justice from getting perverted or prejudiced or interfered with. Secondly, these words show that the expression "contempt of court" in Article 19(2) indicates that

the object behind putting these words in Article 19(2) is to regulate and control administration of justice. Thirdly, if one reads Article 19(2) with the second part of Article 129 or Article 215, it is clear that the contempt action does not exhaust the powers of the Court of Record. The reason being that contempt is an offence sui generis. Common law defines what is the scope of contempt or limits of contempt. Article 142(2) operates only in a limited field. It permits a law to be made restricted to investigations and punishment and does not touch the inherent powers of the Court of Record. Fourthly, in case of criminal contempt, the offending act must constitute interference with administration of justice. Contempt jurisdiction of courts of record forms part of their inherent jurisdiction under Article 129/ Article 215. Superior Courts of Record have inter alia inherent superintendent jurisdiction to punish contempt committed in connection with proceedings before inferior courts. The test is that the publication (actual and not planned publication) must create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. It is important to bear in mind that sometimes even fair and accurate reporting of the trial (say murder trial) could nonetheless give rise to the "real and substantial risk of serious prejudice" to the connected trials. In such cases, though rare, there is no other practical means short of postponement orders that is capable of avoiding the real and substantial risk of prejudice to the connected trials. Thus, postponement orders safeguard fairness of the connected trials. The principle underlying postponement orders is that it prevents possible contempt. Of course, before passing postponement orders, Courts should look at the content of the offending publication (as alleged) and its effect. Such postponement orders operate on actual publication. Such orders direct postponement of the publication for a limited period. Thus, if one reads Article 19(2), Article 129/ Article 215 and Article 142(2), it is clear that Courts of Record "have all the powers including power to punish" which means that

Courts of Record have the power to postpone publicity in appropriate cases as a preventive measure without disturbing its content. Such measures protect the Media from getting prosecuted or punished for committing contempt and at the same time such neutralizing devices or techniques evolved by the Courts effectuate a balance between conflicting public interests.

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45. The postponement orders is, as stated above, a neutralizing device evolved by the courts to balance interests of equal weightage, viz., freedom of expression vis-a-vis freedom of trial, in the context of the law of contempt.

46. One aspect needs to be highlighted. The shadow of the law of contempt hangs over our jurisprudence. The media, in several cases in India, is the only representative of the public to bring to the notice of the court issues of public importance including governance deficit, corruption, drawbacks in the system. Keeping in mind the important role

of the media, Courts have evolved several neutralizing techniques including postponement orders subject to the twin tests of necessity and proportionality to be applied in cases where there is real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Such orders would also put the Media to notice about possible contempt. However, it would be open to Media to challenge such orders in appropriate proceedings. Contempt is an offence sui generis. Purpose of Contempt Law is not only to punish. Its object is to preserve the sanctity of administration of justice and the integrity of the pending proceeding. Thus, the postponement order is not a punitive measure, but a preventive measure as explained hereinabove. Therefore, in our view, such orders of postponement, in the absence of any other alternative measures such as change of venue or postponement of trial, satisfy the requirement of justification under Article 19(2) and they also help the Courts to balance conflicting societal interests of right to know vis-a-vis another societal interest in fair administration of justice.

47. One more aspect needs to be mentioned. Excessive prejudicial publicity leading to usurpation of functions of the Court not only interferes with administration of justice which is sought to be protected under Article 19(2), it also prejudices or interferes with a particular legal proceedings. In such case, Courts are duty bound under inherent jurisdiction, subject to above parameters, to protect the presumption of innocence which is now recognised by this Court as a human right under Article 21, subject to the applicant proving displacement of such a presumption in appropriate proceedings.

48. Lastly, postponement orders must be integrally connected to the outcome of the proceedings including guilt or innocence of the accused, which would depend on the facts of each case.

49. For afore-stated reasons, we hold that subject to above parameters, postponement orders fall under Article 19(2) and they satisfy the test of reasonableness.

48. The contempt proceedings are quasi-criminal in nature and the Court must be satisfied about the contemnor's guilt beyond reasonable doubt. We would also like to hasten to add that the person cannot be permitted to comment upon the conduct of the Court in the name of fair criticism, which, if not checked, the same would be detrimental to the institution itself. The role of the Court is to maintain the majesty of law and to permit reasonable criticism.

49. The print media integrates/assimilates people and harmonizes their living. It moulds opinion and also induces changes. The role of Press is also to generate healthy debate and discussion. India is one of the 10th largest publishers of the newspapers. Indian Press has played a very important role in the country's struggle for freedom. The reporting must be error free, actual and based on factual information. It should be objective and interpretive in order to reach the truth and significant facts and separate truth from falsehood. The Journalist's views should be without prejudice. There should be clarity of expression. He has to undertake

research. He, as a sociologist, has to feel the pulse of the society to usher new era. He has to garner public opinion against the evils in the society and how to eradicate them. In order to ensure that there is accurate reporting of the court proceedings, the Journalists/Reporters should be well conversant with the legal terms and are expected to peruse the judgments/orders of the Courts of law. Fearless and independent press is essential to strengthen and nurture the democracy.

50. **The Tribune** was founded on 2nd February 1881 in Lahore by Sardar Dyal Singh Majithia. The Tribune and its sister publications are published by the Tribune trust.

51. We hold the Tribune to highest esteem. The Editorial and the Articles published in the Tribune are world class. The Statesmen like Mr. B.K. Nehru have remained President of the Tribune trust. Hon'ble Justice S.S. Sodhi (Retd. Chief Justice) also falls in the same league being eminent jurist and thinker. Sh. Dyal Singh Majithia's contribution towards fearless journalism and

his contribution in the sphere of education is also legendary. The contribution of the Tribune before and after independence remains unparalleled. It has kept and maintained the highest standard of journalism. The Tribune has also moulded our careers and we have no hesitation in admitting that it has acted as a philosopher, guide and mentor to us. We start our day by reading the Tribune in the morning. When we go out during vacations and come back, the first thing which we do is to catch up with the Tribune in order to be with the time and space.

52. Before parting with the judgment, it would be apt to add that in order to strengthen the 4th pillar of the democracy, we recommend/suggest to the State Government to prepare a welfare scheme to improve the service conditions of the Journalists and create a corpus to pay pensionary benefits to those Journalists, who have spent at least 30 years in journalism. These suggestions/recommendations are necessary to provide security and fearlessness in their professional pursuits.

53. The Andhra Pradesh Government has framed the rules for the welfare of working journalists called "The Andhra Pradesh Working Journalists Welfare Fund Rules, 1986. These rules have come into force with effect from 1.1.1986. Similarly, Orissa Government has also framed the Orissa Working Journalists Welfare Fund Rules, 2006 vide resolution dated 7.3.2006 to provide for the constitution of a welfare fund for the benefit of the indigent working journalists and retired working journalists and their dependants. The U.P. Government has three tier welfare benefits, i.e. pension scheme regulated by Director Public Relation, health scheme and certain reservation in housing plots/flats in Government housing schemes. In Himachal Pradesh, the retired journalists only get meagre pension between Rs. 4,000/- to 5,000/-. The wage structure of permanent journalists is governed by the wage board and the wage structure of contractual journalists is regulated by the terms and conditions of the contract. Till date, the Government of Himachal Pradesh has not framed the rules for the creation of welfare fund/pension

scheme/health scheme for the working/retired journalists. We recommend/suggest to the State of Himachal Pradesh to frame Working Journalists Fund Rules as framed by the Government of Andhra Pradesh as well as Government of Orissa. We also recommend/suggest that pension scheme/health scheme be framed by the State Government to be regulated by the Addl. Chief Secretary/Director, Information and Public Relations, Government of Himachal Pradesh by creating necessary corpus on the analogy of scheme framed by the Government of Uttar Pradesh. It is made clear that the suggestions/ recommendations would only govern the Journalists, who earn their livelihood primarily from the field of journalism. The pension should be made applicable to only those journalists, who have spent 20-25 years in the field of active journalism. Needful be done within a period of three months from today.

54. Thus, in view of the definitive law laid down by the Hon'ble Supreme Court and having regard to the facts and circumstances of the case, the unconditional apology tendered by Sh. Kuldeep Chauhan is accepted

with a warning that in future he should be more careful and responsible by providing fair, accurate and impartial information. The proceedings are closed. The notice is discharged.

55. We remember the metonymic adage coined by English author **Edward Bulwar Lytton** in 1839 “***The pen is mightier than the sword***”.

(Justice Rajiv Sharma),
Judge.

(Justice Sureshwar Thakur),
Judge.

4.12.2015
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