

## INVESTIGATIVE JOURNALISM — NEED FOR LEGISLATION

By

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The media at the present day is investigating into various matters of public interest and publishing sensational news. Sometimes, they even undertake trap investigations to bring out the truth and impart transparency to the transactions. For instance, the Tehalka incident a few years ago created sensation and even contributed for the resignation of some persons occupying high positions.

Investigative Journalism,<sup>1</sup> is of recent origin. Historically, the media was born as an organ of the people against feudal oppression. In Europe, the media played a major role in the transformation of feudal society to a modern one. Everyone is aware of the great role the print media played in prepared for, and during, the great British, American and French Revolutions. The only media at that time was the print media, and this was used by great writers like Rousseau, Voltaire, *etc.*, in the fight of the people against feudalism and despotism. Everyone knows of the great stir created by Thomas Paine's<sup>2</sup>, pamphlet 'commonsense' during the American Revolution, or of the letters of Junius during the reign of the despotic George III.

B. Investigative journalism is a type of reporting in which reporters deeply investigate

a topic of interest, often involving crime, political corruption, or some other scandal

The media became a powerful tool in the hands of the people at that time because the people could not express themselves through the established organs of power, since these organs were in the hands of feudal and despotic rules. Hence, the people had to create a new organ, which would serve them. It is for this reason that the print media became known as the Fourth Estate. In Europe and America it represented the voice of the future, as contrasted to the feudal or despotic organs, which wanted to preserve the *status quo* in society.

However, though originating as an organ of the people, the media was subsequently taken over by the established classes who used it as a tool for preserving their status. Instead of fighting social evils it was used as a means of diverting the attention of the people from the real issues to non-issues, or to mould public opinion in a manner, which would serve the established classes.

The Centre to enact a law to prevent the media from reporting anything prejudicial to the rights to the accused in criminal cases from the time of arrest, during investigation and Trial<sup>3</sup>. The subject 'Trial by Media: *Free*

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1. A. De Burgh (2000) states that: "An investigative journalist is a man or woman whose profession it is to discover the truth and to identify lapses from it in whatever media may be available. The act of doing this generally is called investigative journalism and is distinct from apparently similar work done by police, lawyers, auditors and regulatory bodies in that it is not limited as to target, not legally founded and closely connected to publicity".
2. Thomas Paine (February 9, 1737 – June 8, 1809) was an author, pamphleteer, radical, inventor, intellectual, revolutionary, and one of the Founding Fathers of the United States. He was born in England and lived and worked there until age 37, when in 1774 he immigrated to the British American colonies, in time to participate in the American Revolution. His principal contributions were the powerful, widely-read pamphlet *Common Sense* (1776), advocating Colonial America's independence from the Kingdom of Great Britain, and *The American Crisis* (1776–1783), a pro-revolutionary pamphlet series.
3. 17th Law Commission recommendations

*Speech v. Fair Trial under Criminal Procedure*<sup>4</sup>, was taken up *suo motu* by the Commission having regard to the extensive prejudicial coverage of crime and information about suspects and the accused, both in the print and electronic media.

The Commission said<sup>5</sup>, “Today there is a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even Judges and in general on the administration of justice.” According to our law, a suspect/accused is entitled to a fair procedure and is presumed to be innocent till proved guilty in a Court of law. None can be allowed to preJudge or prejudice his case by the time it goes to Trial.”

The report said that publications, which interfered or tend to interfere with the administration of justice would amount to criminal contempt under the Contempt of Courts Act, 1971 and “if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.” The report noted that at present, such publications would be contempt only if a charge-sheet had been filed in a criminal case<sup>6</sup>. The Commission has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge-sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case.

The dictum of Law is “let hundred criminals escape, but not one innocent man

be punished.” It is also said that “Every person shall be presumed to be innocent until he is proved to be guilty. It is clear from these dicta, that the accused is entitled to a fair trial in all criminal matters. A fair trial should be in conformity with principles of natural justice, which are the following:-

- (a) No one should be a Judge in his own case<sup>7</sup>.
- (b) No one should be condemned unheard<sup>8</sup>.
- (c) He who hears should decide.
- (d) Justice should not only be done, but it should be seen to be done.
- (e) Speaking orders (order to be supported by reasons).

Only when all the above principles of natural justice are observed, the trial can be said to be fair. The media, which sensationalize the offences committed, have an adverse effect in as much as they prejudice the mind of the Judge who is supposed to have an open mind on the issue.

The Law Commission, therefore, expressed the need for the enactment of the law to regulate trial by media.

Yet another recommendation suggested by the Commission was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast.

The Commission said that such a practice was prevalent in many countries including the U.K.

4. Amendments to the Contempt of Court Act, 1971

5. 200th report of 17th Law Commission to the Government

6. Under Section 3(2) of the Contempt of Court Act, 1971

7. Nemo debet esse judex in propria causa

8. Audi alteram partem

The report also said that publications with reference to character of the accused, previous convictions, confessions, judging the guilt or innocence of the accused or discrediting witnesses could be a criminal contempt. The recent phenomenon of media is interviewing potential witnesses, about publicity that was given by the police and about investigative journalism.

It is noteworthy that the media should not itself act as a Court by judging on the guilt or innocence of the accused or discrediting witnesses and impeaching the credit of the witness. It would undoubtedly have some kind of an impact on the trial to be conducted by the Court. The media should also refrain from interviewing potential witnesses and giving wide publicity for their views and opinions.

The Commission enclosing a draft bill expressed the view that the report was important and crucial for the country in the interests of criminal justice.

There is a cleavage of opinion on the above point of view and some administrators and political leaders are of the view that the media should be allowed full liberty to express their views in this connection. They defend the role of the media in highlighting the lapses and deficiencies of the prosecution and thereby they are of the view that otherwise the Rule of Law would be defeated.

Mr. Justice *Hugo Black*<sup>9</sup>, of the U.S. Supreme Court in his historic decision in *New York Times v. U.S.* (The Pentagon Papers Case)<sup>10</sup>, observed:

“In the First Amendment of the Founding Fathers gave the free press the protection it must have to fulfil its essential role in our democracy. The press was to serve the governed, not the governors. The Government’s power to censor the press was abolished so that the press would remain forever free to censor the Government. The press was protected so that it could bare the secrets of Government and inform the people. Only a free and unrestrained press can effectively expose deception of Government. And paramount among the responsibilities of a free press is the duty to present any part of the Government from deceiving the people and sending them off to distant lands to die of foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purposes that the Founding Fathers saw so clearly. In revealing the workings of Government that led to the Vietnam War, the newspapers nobly did precisely that which Founders hoped and trusted they would do.”

These jurists are of the view that the country has a Vibrant Democratic System<sup>11</sup>, with a highly independent Judiciary. They reject the charges that Trial by media in important cases tends to influence the Judges while dealing with cases.

Citing the recent *Jessica Lal* case, it pointed out that the media far from interfering with

9. *Hugo Lafayette Black* (February 27, 1886 – September 25, 1971) was an American politician and jurist. A member of the Democratic Party, Black represented the State of Alabama in the United States Senate from 1927 to 1937, and served as an Associate Justice of the Supreme Court of the United States from 1937 to 1971. Black was nominated to the Supreme Court by President Franklin D. Roosevelt and confirmed by the Senate by a vote of 63 to 13. He was first of nine Roosevelt nominees to the Court, and with the exception of William O. Douglas, he outlasted them all. Black is widely regarded as one of the most influential Supreme Court Justices in the 20th century

10. [1971] 402 US713

11. The dictionary meaning of vibrant democracy systems is Brilliant, Intoxicate, Indomitable, Optimistic democracy systems

the judicial process was in fact helping society by exposing the lapses of prosecution.

Inasmuch as there is strong independent Judiciary, it is opined that there is no need for fear the press influence.

“The media is the friend of everybody. There have been instances where the media has produced clinching evidence to help the prosecution in several cases.”

A Supreme Court Judge while complimenting the role of the media in various spheres, however, said publication of details

pertaining to the alleged criminal activities of a suspect even before the commencement of a trial was not advisable in the interest of a fair trial. It is submitted that in spite of independent Judiciary that conducting Trial by media and sensationalizing the matters connected with the criminal case is not conformity with the morality of journalism<sup>12</sup>.

### **Conclusion:**

When a matter is sub-judice, criminal case should not be over exaggerated by the media. A law to regulate such investigative journalism is undoubtedly the need of the hour.

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## **JURISDICTION OF COURTS OF SMALL CAUSES VIS-À-VIS CIVIL COURTS**

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Under the Provincial Small Causes Courts Act 1887 (Act No.9 of 1887), it is said under Section 15(1) that a Court of Small Causes shall not take cognizance of suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes. In the said second schedule there are 1 to 43 A Articles. In these Articles, Article (8) is the subject-matter, which is as follows :

“(8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the State Government with authority to exercise jurisdiction with respect thereto”.

2. We have also to see Section 16 of the Act to understand the exclusive jurisdiction of a Court of Small Causes, which is extracted hereunder.

“Section 16. Exclusive jurisdiction of Courts of Small Causes :—Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.”

3. So from a reading of the above two sections and Article 8 of the Second Schedule, the following points are crystal clear :

- (a) A suit for recovery of house-rents is cognizable by a Court of Small Causes only and civil Court has no jurisdiction;
- (b) A suit for recovery of any rent, for example, rent of agricultural land, is

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12. It was coated in Hindu News Paper on 3rd September, 2006