

# Media has no privileges, then why guidelines?

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The recent guidelines, which were being framed by the Supreme Court for the media to report ongoing proceedings before various courts have evoked a lot of responses.

Due to frequent media-bashing, these guidelines would have curtailed the media's right to promote vigorous debate on ongoing proceedings where the accused may be a bigwig like A. Raja or DMK MP Kanimozhi. Luckily there has been no final word till now.

If you repeat a lie often enough, it becomes the truth and nowhere is this more evident than the myth that the media is the fourth estate of the nation. Consider these facts:

a) The media is not mentioned anywhere in the Constitution of India whereas the executive, legislature and judiciary have parts 5, 6 and 7 devoted to their powers and privileges.

b) The media does not have a single privilege including

the vital privilege to keep their sources confidential whereas the police (under the executive), lawyers and married couples have such privileges

c) The media has neither special power nor privileges apart from the general one of freedom of speech and expression which an ordinary citizen can exercise. But it has got onerous duties to report truly and faithfully what is often inaudible in most court rooms and tribunals, failing which journalists can be hauled up for contempt of court.

It is a tragedy that although parts of the Constitution have been rewritten by the Supreme Court innumerable times, right from Golak Nath's case to the celebrated Keshavananda Bharati's case, so that what the founding fathers envisaged is not the Constitution that we have today. The media still has no privileges but can only engage in discussion and debate. The media, unlike the judiciary, is a heterogeneous body of various competing organisations with divergent ideologies,

qualifications, target audiences and languages which can never be united.

Unlike the media, the judiciary is a homogenous body with a rigid hierarchy and a set of privileges clearly defined by the Constitution. While it is true that a judge who is attacked or defamed may not defend himself in public, he has total freedom of speech within his court room and is immune for whatever he says or does in discharge of his duties. Judges have fixed salaries and accommodation provided to them by the executive with pensions and other benefits clearly laid down by the High Court Judges Conditions of Service Act.

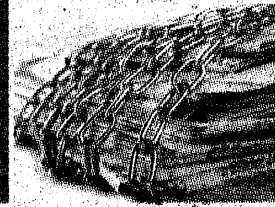
In stark contrast, the media has no immunity at all and is only burdened with onerous duties.

A reporter who has exposed corruption can be coerced into divulging his sources if any court so orders. Luckily, such orders are infrequent which is what propelled the Law Commission of India to recommend amendment of The Indian Evidence Act, 1872, to grant

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privilege to reporters from being compelled to disclose their sources. Unlike the judiciary and the legislators, journalists do not normally get subsidized housing or pensions from the state.

Their survival depends on the vagaries of circulation and profits earned from TRP ratings. What cannot be doubted is that in a democracy, the people have a right to know and when an accused has been arrested for a crime, the trial may drag on for decades with witnesses often turning senile and a few dying before the judgment is pronounced. It is in this scenario that thousands of criminals are often acquitted while their victims live in fear and trepidation.

Yet, some of the guidelines framed by the Supreme Court are meant to protect the rights of the accused to a fair trial, thereby curbing the media's freedom to report vigorously on an ongoing trial.

In a democracy, the test of a law is the principle formulated by the 19th century jurist Jeremy Bentham (1748-1832) who pronounced: *Salus Populi Est Suprema Lex* which translated into simple English, means that the good of the majority is the supreme law. Accused persons in heinous crimes comprise a significant minority of the population whereas the vast majority of the people are denied the right to information about

the corrupt actions of a few which benefits only the latter.

Consider this: An Inspector General of Police S.P.S. Rathore molests a 14-year-old girl Ruchira Girhotra who later commits suicide. A grandson of Admiral S.M. Nanda runs over pavement dwellers in Delhi and is later acquitted for want of evidence. It is only under intense media scrutiny that the case is reopened and two Delhi lawyers are debarred for four months.

It is people of this sort with money and power who benefit by gagging the media during trial.

While nobody doubts the rights of the accused to a fair trial, it is obvious that judges who are adept at weighing evidence need not be swayed by media reports and in fact, some judges do not read newspapers at all. Convict with evidence and acquit without evidence is the credo of criminal jurisprudence all over the world. Hence, the question of the media prejudicing the rights of the accused to a fair trial does not arise.

Courts are supposed to function insulated from public opinion but in fact it is public opinion mobilised by the media which has facilitated speedy justice. Were the police to be left alone by the media and the judiciary to do their job without the media acting as a watchdog, cases like the Rathore case and the Sanjeev Nanda hit-and-run would result in acquittals.

Right since pre-independence, there have been thousands of platitudes mouthed by stalwarts like Jawaharlal Nehru to Indira Gandhi on freedom of the press. But ironically, it was these same leaders who curtailed press freedom by imposing restrictions on the print media (as television had not yet come to India in those decades.)

When Nehru was the Prime Minister, investigative reporting was unheard of with the newspapers relying on government hand-outs and a few nuggets of information leaked here and there. After the two landmark decisions in Romesh Thappar versus State of

Madras and Brij Bhushan versus State of Delhi in 1950, it was well settled that there can be no prior restraint on press freedom. "Publish and be damned," and not "be damned before you publish" was the credo of the executive, legislature and the judiciary.

After over six decades of independence when the Arab states are veering towards greater freedom for their tightly controlled media, it is ironical that frequent criticism of the media has propelled attempts to again formulate measures to protect those charged with heinous offences and suppress the people's right to know.

The only casualty will be Satayameve Jayate and truth will no longer prevail.

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