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Abstract

There is a certain tension between the primary objective of the media to tell as much as possible to the public and the objective of the companies to retain confidentiality. In this tussle, legal and ethical issues are raised, particularly in the recent times when technology is changing at a rapid pace and also with stakes involved becoming higher and higher. With a written Constitution in India guaranteeing freedom of speech and expression to its citizens, including the media, it is a real test for the judiciary to achieve the right balance. Journalists are often protected by law not to disclose the identity of the confidential source, and this right – reporter's privilege – at times seriously hinders the course of law. The paper examines these issues and discusses a couple of such cases. Further, it studies the role of media in India in the fast changing scenario, particularly in the light of the recent Supreme Court judgement – in Sahara v. SEBI case (September 11, 2012) – mandating self-regulation. The paper concludes that legal tools alone cannot bring the desired change and concerted effort needs to be made by the media, government and businesses for healthy and desirable dissemination of information.

Key words: Media, Confidentiality, Fiduciary Duty, Freedom of Speech and Expression, Sub Judice, Self-regulation

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INTRODUCTION

On September 11, 2012 the Constitution Bench of the Supreme Court of India (SC), in a landmark judgement[1] – *Sahara* v. *SEBI* – upheld the right to freedom of speech and expression, particularly of the media and categorically refused to frame any guidelines for reporting of the court proceedings by the media. The SC, however, cautioned the media that it should know its limits and must draw the line – the *Lakshman Rekha* – itself. This case is an eye opener regarding the relationship between media and business. It raises a number of issues which are at the core of the governance of any company, particularly the confidentiality and fiduciary duty on the part of the businesspersons, and reporter's privilege and freedom of speech and expression on the part of the mediapersons. There is a definite tension between these two essential requirements – corporate confidentiality on one hand and freedom of speech and expression on the other. The paper examines these two and discusses the role of media in changing times.

CONFIDENTIALITY IN CORPORATE MATTERS

A company is a distinct legal entity, however, it is only a legal fiction. It cannot act on its own. In *Citizens United,* Steven, J. made the following observation:

> *"The fact that corporations are different from human beings might seem to need no elaboration…corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their "personhood" often serves as a useful legal fiction."*[2]

Decisions for a company are made by human beings, mostly collectively. These individuals – like any other individuals – have their own emotions, fears, anxieties, preferences, likes and dislikes, capacity to take risk, limit to handle external pressure, etc. Each of these individuals in the company is supposed to work and make all the decisions in the interest of the company. Each of them is bound by the fiduciary duty – the duty of loyalty and duty of care, which means that he is supposed to be loyal to the company and must exercise due care in all matters related to the company. In case they fail to meet their fiduciary duties, the company

[1] Sahara India Real Estate v. SEBI, *Supreme Court of India*, September 11, 2012, 2012 Indlaw SC 289
[2] *Citizens United* v. *Federal Election Commission*, 558 U.S. 310 (2010)

may very well sue them as was done by Olympus – maker of cameras and medical optical devices called endoscopes – in January this year. The company sued its nineteen current and former board members, including the current president for almost $ 50 million. Allegedly there had been an accounting fraud going on for more than a decade. The company sued them as they had failed to meet their fiduciary duties as directors and board members while the fraud was underway.[3]

It is interesting to note that it is not only the issue of corporate confidentiality, but it can even extend to the idea of "corporate anonymity." At times and in certain jurisdictions it may become next to impossible to find who owns a company. It may be termed as the ultimate privilege. Any company with anonymous owners can easily be misused for money laundering and other corporate frauds. As reported by the Economist[4] it is not easy to change the law and even in the United States there are a good number of anonymously owned companies, which unfortunately have featured in scandals about campaign financing and healthcare fraud. According to a World Bank report, "The Puppet Masters"[5] which investigated 150 big corruption cases to the tune of $ 50 billion, in almost all the cases there was an involvement of such companies and trusts.[6] The following paragraph is worth citing from the article,

> *"Jurisdictions such as the British Virgin Islands may keep ownership information out of the public gaze, but insist they co-operate readily with requests from law-enforcement bodies. Companies that buy mineral rights say that anonymous front companies are a vital part of their strategy when haggling with landowners. Countries with a common-law tradition, such as Britain, flinch at the idea of a central register of trusts, which a real reform would necessitate. The government wants to cut regulation, not increase it. Britain also still allows "bearer shares": certificates that give control of a company to whoever has the paper in their hands at a particular moment. Other countries find such loopholes scandalous."*[7]

Whether the promoters of a company are known or anonymous, a company has to work within the legal framework, which is dynamic, and may change, with time and place. The company in any case has to remain on the right side of law. As the legal periphery is dynamic, the company has to be nimble in case the periphery has a tendency to change rapidly. When we say that the company has to be nimble, we mean that the individuals who are making decisions for the company have to be agile, alert and swift in making decisions. If the company doesn't behave in this manner in a fast changing legal environment, it is quite possible that it may be losing on a number of opportunities which might have been beneficial for the company, had it been able to lap them up. In such a scenario, it is quite obvious that individuals who are making decisions for the company have to meet very often – either at a place, a room for example, where everyone is physically present, or through electronic means, which includes videoconferencing or teleconferencing – to deliberate on the opportunities available and challenges being faced by the company, discuss the issues and make decisions.

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[3] *Olympus Sues Executives Over Cover-Up, but Does Not Dismiss Them*, New York Times, January 10, 2012. Data retrieved from http://www.nytimes.com/2012/01/11/business/global/olympus-sues-executives-over-cover-up.html?ref=business on October 10, 2012.

[4] *Corporate anonymity: Ultimate privilege*, The Economist, January 21, 2012. Data retrieved from http://www.economist.com/node/21543132 on October 10, 2012.

[5] The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It, Stolen Asset Recovery Initiative, The World Bank, UNODC, 2011. Data retrieved from http://www1.worldbank.org/finance/star_site/publications/Puppet-Masters.html on October 10, 2012.

[6] *Idem.*

[7] *Idem.*

It is in the interest of the company – which includes the shareholders primarily, and other stakeholders also – that the deliberations remain confidential, both from the perspective of competitors and the general public. It is not always desirable that each and every issue which has been discussed in the board meetings, and each and every argument made at such meetings, and each and every document referred to, etc. are made available to all and sundry. Typically, even the minutes of the meeting do not reflect each and every word spoken at the meeting, as the basic idea of preparing minutes is to capture the decisions made in the meeting as well as any other relevant statement or objection made by a particular member to be recorded, if that member desires so.

Thus, a number of things which a company decides and the manner in which it decides need not be made public; they are only meant for internal consumption of the company. Having said that, for a number of companies – particularly large companies – there is tremendous interest in a large section of the people as to how they function and how they are going to do their business in the future. A number of competitors, suppliers, distributors and investors – both are small and large – are on the lookout for any new plan being chalked out and any new strategy being formulated in the boardrooms of a number of prominent companies.

MEDIA AND REPORTER'S PRIVILEGE

For the journalists, newspapers, news channels etc., one of the most important parameters of important news items is that it should be different, apparently unbelievable, sensational, and juicy. The juicier the news is, the better is the saleability. No wonder, it is often said, "dog bites man is no news, man bites dog is news." In this zest, it is not uncommon for the news organisations to transgress the legal and ethical boundaries in collection of such information. With the mushrooming of news channels, a good number of channels have devoted themselves fully to business news, and are always fishing for certain news stories. Journalists use their contacts in different companies to get relevant and exclusive information on the decisions made – which may be highly confidential in nature – and also issues being thrashed out in boardrooms.

Technological Advancements

With the technology changing so fast, a number of new technological devices are also being used to get any relevant, useful and extraordinary piece of information. Today technology is available which can provide easy access to a hacker to a boardroom meeting through videoconferencing equipment.

As reported in the New York Times[8], it was demonstrated by a Boston-based company – Rapid7 – that looks for gaps security of computer systems. The company found that the videoconferencing equipment was often left vulnerable to hackers. In the last several years, the technology has evolved so much that the audio and video quality is extremely good, making it possible to even read a piece of paper lying on the table in the conference room where videoconferencing equipment is being used. The technology is so good that simply by moving the mouse the camera can be steered around the meeting room and can be soon with such great precision that one can easily discern groups in the wood and paint flakes on the

[8] *Cameras May Open Up the Board Room to Hackers*, New York Times, January 22, 2012. Data retrieved from http://www.nytimes.com/2012/01/23/technology/flaws-in-videoconferencing-systems-put-boardrooms-at-risk.html?_r=4 on October 10, 2012.

wall. This technology – though a boon for people who cannot travel frequently to participate in meetings – maybe a bane as far as confidentiality is concerned.

Rapid7 even found access to Goldman Sachs boardroom and found it easy to hack the videoconferencing equipment of several top-notch companies, law firms and even courtrooms across the United States. The chief executive of Rapid7 Mike Tuchen, said,

> *"The entry bar has fallen to the floor…These are literally some of the world's most important boardrooms — this is where their most critical meetings take place — and there could be silent attendees in all of them."*[9]

Businesspersons and fiduciary duty vis-à-vis media

Even without using such advanced technology, the mediapersons can get access to highly confidential information. Very often it is reported in the media that this particular information has been gathered from a highly placed source in the company, who on conditions of anonymity stated…, or, sources close to the events happening in the company told this reporter without revealing identity…, etc. Such communication raises the issue of the liability of these sources. Only those people who have access to the information and are privy to the discussion could have revealed this piece of information to the news organisations; and these people are bound by the fiduciary duty towards the company, which, of course, includes the duty to maintain confidentiality.

Thus, either the individuals who have access to the information related to the company, have committed breach of their fiduciary duty by revealing it to the news organisations; or the news organisations have employed either unethical or illegal means to get hold of the confidential piece of information, which if not *ipso facto* illegal, is surely violation of code of good journalism. However, things are on a different place when we try to understand a situation in which the person who has access to confidential information about the company reveals it to the news organisations, without any unethical or illegal means employed by the news organisation. This situation is one of the most interesting situations possible, as it presupposes that the conduct of the news organisations is absolutely legal and ethical.

The only question which needs an answer is, can these news organisations be forced by law to disclose the identity of their source?

The law on this aspect is not uniform all over the world. It would be enlightening to go through the provisions in the UK, the US and India.

Two cases from the UK

In the UK, the rights are sort of balanced, however, two interesting cases highlight the importance of freedom of the press and the extreme difficulty faced by the English courts and the government in forcing any news organisation and journalist to disclose the identity of the confidential source.

[9] *Ibid.*

Interbrew Case

In 2001, Interbrew - one of the largest brewers in the world – was contemplating to take over South African Breweries (SAB), also one of the largest breweries in the world, but smaller in volume and sales to Interbrew. In November that year, a journalist at the well-known newspaper, The Financial Times (FT), got hold of a copy of a leaked document providing details of a possible takeover bid by Interbrew. The journalist did not identify the source furnishing the document. To write a story, the he had contacted Goldman Sachs – Interbrew's investment banker – and told them that he was writing an article to be published in the FT. Thereafter, the article was published and gave reference to the leaked document. Other well-known newspapers and news agencies like the Times, Reuters, The Guardian and Independent also carried articles based on that particular leaked document, as they had also received copies of the same.

Interbrew was shocked and tried to locate and identify the source, however, it did not succeed. Thereafter, Interbrew issued a press release denying the veracity of the document and suggesting that the person who had leaked the document to the media might possibly had doctored it. There was a definite impact on the share price of SAB, which spiked. Analysts wrote that the leak might have been made by an anonymous source to take advantage of the sudden rise in SAB's share price.

Interbrew moved the court against FT and other media organisations and prayed for disclosure of the identity of the source. The court ordered in favour of Interbrew and gave the reasoning that the source had deliberately mixed confidential information with false information, making it a lethal concoction, and created a false market in the shares of Interbrew and SAB. The Court held that it was a serious criminal offense resulting in direct adverse impact on public interest, which made it necessary to identify the anonymous source. Thus the FT and other media organisations were ordered to disclose the identity of the source.

The media organizations were dissatisfied with this order and appealed against it in the Court of Appeal. The Appellate Court upheld the decision and observed that it was necessary in the public interest that the media organisations disclosed the source. The Court also observed that the intention of the source was calculated to maximize the mischief.[10]

Disappointed with this order, the media organisations approached the House of Lords, which refused permission to appeal. Thereafter the FT filed an application at the European Court of Human Rights (ECHR) in December 2002. Its contention was that a judicial order requiring it to disclose the source of the leaked documents would have resulted in the identification of journalistic sources and it would have violated the fundamental freedom of expression as guaranteed in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It reads as under:

> ***Article 10 – Freedom of expression***
>
> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

[10] *Interbrew SA v Financial Times Ltd & Others*, Court of Appeal, [2002] EWCA Civ 274, March 8, 2002

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

On December 15, 2009, the ECHR held that such an order did violate Article 10.[11] The five news groups - the Guardian, FT, the Times, Reuters and the Independent – won the case. The Court held that these news organisations did the right thing by not handing over leaked documents.[12] The Court observed: "the Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and that, in that context, the safeguards guarantee of the press are particularly important. Furthermore, protection of journalistic source is one of the basic conditions for press freedom". The Court found that in case the journalists are ordered to identify the anonymous sources, it would be undesirable chilling effect and that would restrict future dissemination of information which may not be in the public interest. The Court also ordered the UK Government to pay €160,000 to the news organisations as legal costs.

Goodwin Case

Mr William Goodwin, a British journalist, joined the staff of "The Engineer" in 1989 as a trainee journalist. On November 2, 1989, an anonymous person telephoned Mr Goodwin and supplied him with information about the company "Tetra Ltd." The person told him that the company was in the process of raising £ 5 million loan and had been facing financial problems. This information from that particular person was unsolicited and no payment was made in exchange. Mr Goodwin at that time had no reason to believe that the information furnished to him was derived from a stolen and confidential document.

To verify the facts, he telephoned the company and got to know that the information leaked to him emanated from a confidential document of which only a numbered copies had been prepared. It so happened that one of those copies was left unattended for almost an hour and during that time the anonymous caller got hold of it. Tetra filed an application in the court seeking an injunction order restraining The Engineer from publishing any such article which Mr Goodwin had been contemplating of writing. The company further prayed that the source must be identified. The court allowed both the prayers by passing an injunction order so that the publisher would not be able to publish any such article based on the information provided by the anonymous person, and also ordered the publisher and Mr Goodwin to identify the source. The court based its order on the grounds that if such an article was published it would be a complete loss of confidence in the company and the company would face problems in

[11] *Case of Financial Times v. The United Kingdom*, Judgment by the European Court of Human Rights (Fourth Section), Application no. 821/03 of 15 December 2009. Data retrieved from http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{%22dmdocnumber%22:[%22859859%22],%22itemid%22:[%22001-96157%22]} on October 10, 2012.

[12] *Court rules in favour of news groups over Interbrew leaked documents*, The Guardian, December 15, 2009. Data retrieved from http://www.guardian.co.uk/media/2009/dec/15/court-rules-interbrew-leaked-documents on October 10, 2012.

refinancing negotiations. Moreover, it would have been in public interest to identify the source.

Mr Goodwin unsuccessfully appealed to the Court of Appeal and the House of Lords. Dismissing the appeal on December 12, 1989, the Court of Appeal - as cited in the ECHR judgement[13] – made the following interesting observation,

> *"Lord Justice McCowan stated that the applicant must have been "amazingly naïve" if it had not occurred to him that the source had been at the very least guilty of breach of confidence."*

On April 4, 1990, the House of Lords upheld the decision of the Court of Appeal and made the following, as cited in the same judgement, equally interesting observation,

> *"Lord Templeman added that the applicant should have "recognised that [the information] was both confidential and damaging"."*[14]

Mr Goodwin refused to divulge the source and the House of Lords fined him £ 5000 for contempt of court. Against this order he complained of a violation of Article 10 of the Human Rights Convention in the European Court of Human Rights. The ECHR ordered[15] that as there was already an injunction on the publication of the confidential information received from the anonymous source, there was no necessity for the disclosure of the source and thus, the judgement of the House of Lords was in breach of Article 10. In case the company had legitimate reason to identify the anonymous source so as to take action against him, this reason was outweighed by the interest of free press in a democratic society. The court further observed that if the journalists where forced by law to reveal the sources, the role of the press in the society would be undermined and such forceful revelation would be a hindrance to the free flow of information, which is so very important for a healthy and efficacious democracy.

Reporter's Privilege in the United States

Most of the states in the US protect the news organisations and journalists from revealing the source, however there is no federal law providing such protection. This is called as the reporter's privilege, or the shield law. There have been a number of instances in which the courts have passed an order for disclosure of the identity of the confidential source and the journalists have been sent to jail for not obeying with the order. An illustrative article[16] mentions the following: William Farr, a Los Angeles Times reporter was jailed for 46 days in 1972 as he refused to identify his confidential sources and Vanessa Leggett was jailed for 168 days in 2001.

Judith Miller of New York Times also went to jail for the same reason. Interestingly she was awarded an 18-month jail term by the federal judge in October 2004, which was stayed as she

[13] *Case of Goodwin v. The United Kingdom*, Judgment by the European Court of Human Rights (Grand Chmaber), Application no. 17488/90 of 27 March 1996. Data retrieved from http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57974#{%22itemid%22:[%22001-57974%22]} on October 10, 2012.
[14] *Idem.*
[15] *Idem.*
[16] Leanne Phillips, *Can a journalist be forced to reveal confidential sources?* Legal Zoom, October 2007. Data retrieved from http://www.legalzoom.com/us-law/privacy/can-journalist-be-forced on October 10, 2012.

appealed. On February 15, 2005, the US Court of appeals for the District of Columbia Circuit upheld the federal courts ruling. Ms Miller moved the US Supreme Court, which declined to hear the case on June 17, 2005. In July, she was taken to Alexandria City Jail to serve her sentence.[17]

The courts in the United States, as is quite evident, do not take the reporter's privilege religiously and whenever it is tested vis-à-vis public interest, the latter outweighs in terms of national security, interest of the people and public order. The right of the journalists and news organisations is, thus, much diluted in the United States as compared to that right in the UK, as far as the disclosure of confidential source is concerned. We can also say that the particular right is much more strong in the UK due to the protection granted by the Human Rights Convention and as held and interpreted by the European Court of Human Rights.

MEDIA FREEDOM IN INDIA

The Constitution of India provides certain freedoms to the citizens of India. One of the most important freedoms is the freedom of speech and expression which has been provided in Article 19 (1). The freedom of speech and expression for the media - both print and broadcast – also emanates from this article. Though the scope of this freedom is quite wide, yet this freedom is not absolute. The State – as defined in Article 12 of the Constitution – can impose reasonable restrictions on this freedom.

Article 19 of the Constitution reads as under:

> **19. Protection of certain rights regarding freedom of speech, etc.**—
> (1) All citizens shall have the right—
> (*a*) to freedom of speech and expression;
> …
> (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, 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 to an offence.

Article 12 of the Constitution defines the State and is as follows:

> **12. Definition**.—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

The State can impose reasonable restrictions on the grounds mentioned in Article 19 (2).

[17] New York Times Reporter Jailed for Keeping Source Secret, *New York Times*, July 6, 2005. Data retrieved from http://www.nytimes.com/2005/07/06/politics/06cnd-leak.html?_r=0 on October 10, 2012.

Meaning of "Reasonable" changes with time:

Nowhere in the Constitution has the term "reasonable restrictions" been defined. The meaning is not written in stone. It gets new meaning with changing times. And, that is precisely what the Supreme Court is mandated to do.

In *Coelho*[18] judgment, the Supreme Court observed:

> *"It is the duty of this Court to uphold the constitutional values and enforce constitutional limitations as the ultimate interpreter of the Constitution…The Constitution is a living document. The constitutional provisions have to be construed having regard to the march of time and the development of law. It is, therefore, necessary that while construing the doctrine of basic structure due regard be had to various decisions which led to expansion and development of the law. The principle of constitutionalism is now a legal principle which requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights…The principle of constitutionalism underpins the principle of legality which requires the Courts to interpret legislation on the assumption that Parliament would not wish to legislate contrary to fundamental rights. The Legislature can restrict fundamental rights but it is impossible for laws protecting fundamental rights to be impliedly repealed by future statutes."*

Recent Case of Cartoons and Sedition Charges: Whether Reasonable?

On September 9, 2012, Mr. Aseem Trivedi – a cartoonist – was arrested by police in Mumbai. He had made cartoons depicting corruption in Indian politics. One of them showed the Parliament building as a toilet seat. Other cartoons also depicted rampant corruption using national symbols. He was arrested on charges of sedition, which is defined under Section 124 A of the Indian Penal Code,[19] and is as follows:

> "124A. Sedition.— Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

His arrest was reported widely in national[20] and international media.[21] Trivedi refused to apply for bail[22] and writers and columnists opposed the arrest vehemently. One of them, Kavitha Rao wrote in The Guardian:

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[18] I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861
[19] Indian Penal Code, 1860 (Act no. 45 of 1860)
[20] Cartoonist Aseem Trivedi arrested, *The Hindu*, September 10, 2012. Data retrieved from http://www.thehindu.com/todays-paper/article3879754.ece on September 17, 2012.
[21] Indian cartoonist Aseem Trivedi jailed after arrest on sedition charges, September 10, 2012. *The Guardian*, Data retrieved from http://www.guardian.co.uk/world/2012/sep/10/indian-cartoonist-jailed-sedition on September 17, 2012.
[22] Enraged at sedition charge, cartoonist Aseem Trivedi refuses to apply for bail, *The Indian Express*, September 10, 2012. Data retrieved from http://www.indianexpress.com/news/enraged-at-sedition-charge-cartoonist-aseem-trivedi-refuses-to-apply-for-bail/1000531/0 on September 17, 2012.

> *"For the last two weeks, parliament has ground to a halt, as the opposition and ruling party fight like schoolboys over who is more corrupt. From bitter experience, Indians know that all political parties are equally, obscenely, venal. …So, it is ludicrous that cartoonist Aseem Trivedi was taken into custody on Sunday for drawing what everyone is thinking. Trivedi has been charged with sedition and insulting the constitution for a series of anti-corruption cartoons."*[23]

While the Maharashtra Government was considering dropping sedition charges against Trivedi, the Bombay High Court granted him bail while hearing a Public Interest Litigation.[24]

Thereafter, the Bombay High Court expressed its opinion that freedom of speech and expression was one of the most important freedoms available to the people of India, and police should have acted with due caution. As reported by India Today:

> *"In a stinging rebuke to the Mumbai police,…the division bench questioned, "How can you (police) arrest people on frivolous grounds? You arrest a cartoonist and breach his liberty of freedom of speech and expression." The court further added, "Today you attacked a cartoonist, tomorrow you will attack a film maker and then a writer. We live in a free society and everyone has freedom of speech and expression.""*[25]

Press Council of India

The Press Council of India was established through an act of Parliament called the Press Council Act, 1978 for the purpose of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India. As mentioned on its website[26], in 1983 the Press Council while replying to a questionnaire sent by the Law Commission of India expressed its opinion regarding disclosure of source of information by journalist in the negative and added,

> *"It is equally strongly felt that if any exception is to be made, it should be done in cases of extreme nature where disclosure is altogether unavoidable in the interest of the administration of justice. But the powers to order disclosure should be conferred only on competent court and that also in confidence to the presiding officer in the first instance, who may then, if satisfied that it is germane to the decision of the case, take such steps as may be necessary to make it a part of the evidence on record".*

[23] India must scrap its repressive sedition laws, *The Guardian*, September 11, 2012. Data retrieved from http://www.guardian.co.uk/commentisfree/2012/sep/11/india-sedition-laws-aseem-trivedi on September 17, 2012.
[24] Bombay high court raps cops, frees cartoonist Aseem Trivedi, *The Hindustan Times*, September 11. 2012. Data retrieved from http://www.hindustantimes.com/India-news/Mumbai/Bombay-HC-grants-bail-to-cartoonist-Aseem-Trivedi/Article1-927953.aspx on September 17, 2012.
[25] Bombay HC hauls up police for sedition case against Aseem Trivedi, *India Today*, September 14, 2012. Data retrieved from http://indiatoday.intoday.in/story/bombay-hc-hauls-up-police-for-sedition-case-against-aseem-trivedi/1/217381.html on September 17, 2012.
[26] Press Council of India, History. Data retrieved from http://presscouncil.nic.in/history.htm on October 10, 2012.

Taking into account the response of the Press Council of India, the Law Commission of India in its 93rd report to the Government, submitted on August 10, 1983 recommended for insertion of section 132A in the Indian Evidence Act, 1872. It was as follows:

> *"132A - No court shall require a person to disclose the source of information contained in a publication for which he is responsible, where such information has been obtained by him on the express agreement or implied understanding that the source will be kept confidential".*
> *"Explanation: In this section -*
> *(a) 'publication' means any speech, writing, broadcast or other communication in whatever form, which is addressed to the public at large or any section of the public.*
> *(b) 'source' means the person from whom, or the means through which, the information was obtained".*

Later, the Law commission in its 185th Report[27] recommended the same. It read as follows:

> ***Law Commission, 185th Report – 2003, Evidence Act***
>
> *Sec. 132A is proposed to protect the media from being compelled to disclose the source of their publication, except in cases where the publication affects the sovereignty, integrity of India, security of State, friendly relations with foreign State, public order, decency, morality or contempt of Court. We have surveyed the law in UK and elsewhere and in particular the recent decision of the European Court in Goodwin's case. We have also referred to the recommendations made in the 132nd Report by Justice K.K. Mathew.*

The government, however, did not take any steps for the implementation of these recommendations. Thus, the situation in India today is that the courts can pass an order forcing any journalist and news organisation to disclose the identity of its confidential source for whatever news it might have gathered. This provision is in direct contrast with the provisions of the English law. The courts in India, therefore, seem to have much more discretion in this respect.

MEDIA'S OBSESSION WITH BREAKING AND EXCLUSIVE NEWS

Media's obsession with breaking and exclusive news is not always acceptable. At times, the mediapersons are not careful enough to remain within the self-made code of conduct. On other occasions, there are unreasonable restrictions imposed by the state, and in such cases the courts in India do provide a remedy. Some of such recent cases are as follows:

Troops Movement Case: Media Freedom Reaffirmed

In a case regarding movement of troops, the Supreme Court on September 14, 2012, quashed an order of the Allahabad High Court. In April this year, the Lucknow Bench of the Allahabad High Court, while hearing a Public Interest Litigation (PIL) passed the gag order restraining the broadcast and print media from reporting anything about the movement of

[27] Law Commission of India, 185th Report, 2003. Data retrieved from http://lawcommissionofindia.nic.in/reports/185thReport-PartI.pdf on October 10, 2012.

troops in the country. On April 4, 2012, the Indian Express carried an unusual story titled, *"The January night Raisina Hill was spooked: Two key Army units moved towards Delhi without notifying Govt."*[28] The starting portion read as follows:

> *"This is a story you would tell with extreme care and caution. But it so starkly characterises the current state of top-level politico-military relations that it is a folly to keep it under wraps, as the entire establishment has tried to do for a full 11 weeks now. It has also taken this team of The Indian Express reporters that long to establish the story and the dramatic developments during, say, about 18 very difficult hours on January 16-17 earlier this year.…Essentially, late on the night of January 16 (the day Army Chief General V K Singh approached the Supreme Court on his date of birth issue), central intelligence agencies reported an unexpected (and non-notified) movement by a key military unit, from the mechanised infantry based in Hisar (Haryana) as a part of the 33rd Armoured Division (which is a part of 1 Corps, a strike formation based in Mathura and commanded by Lt Gen. A K Singh) in the direction of the capital, 150 km away…."*

Hearing the PIL,

> *"The bench ordered, "Thus, without interfering with the independence of media and keeping in view the fact that the news items relating to movements of troops have already engaged the attention at the highest level in the defence as well as in the government, we think it appropriate to direct secretary, home affairs and secretary information & broadcasting, government of India, and the principal secretary, home, government of UP, to ensure that there is no reporting/release of any news item by the print as well as electronic media relating to the subject matter, namely, the movement of troops"."*[29]

The Press Council of India (PCI) and the Indian Newspaper Society (INS) challenged the High Court's order in the Supreme Court. The appeal, *inter alia*,

> *"…raises important questions of law for consideration by this Court, viz. whether a blanket pre-censorship order on reportage of all troop movements would not violate the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution; whether reportage of all troop movements, irrespective of their nature and timing can be said to compromise the sovereignty and integrity of India, and security of the State within the meaning of Article 19(2) of the Constitution; whether reportage relating to the armed forces, which are sensitive in nature and are capable of compromising national interest and security, are already not proscribed under existing laws such as the Indian Penal Code, Unlawful Activities [Prevention] Act, Cable Television Networks Regulation Act and the Official Secrets Act."*[30]

[28] The January night Raisina Hill was spooked: Two key Army units moved towards Delhi without notifying Govt., *The Indian Express*, April 4, 2012. Data retrieved from http://www.indianexpress.com/news/the-january-night-raisina-hill-was-spooked-two-key-army-units-moved-towards-delhi-without-notifying-govt/932328/0 on September 17, 2012.

[29] Allahabad HC bars media from reporting troop movement row, *The Times of India*, April 10, 2012. Data retrieved from http://articles.timesofindia.indiatimes.com/2012-04-10/india/31318440_1_broadcasting-indian-army-hisar-and-agra on September 17, 2012.

[30] Notice on gag order on troop movement, *The Hindu*, August 7, 2012. Data retrieved from http://www.thehindu.com/news/national/article3735463.ece on September 17, 2012.

On September 14, 2012, the Supreme Court,

> *"…set aside a gag order passed by the Allahabad High Court that prohibited the media from reporting on movement of troops. The court said that the impugned directive was not in consonance with the prayers made in the concerned PIL. "We are of the opinion that the High Court ought not have issued certain directives since the prayers were different in the PIL. The directives are not in consonance with the prayers made in the petition. The order can be set aside on this ground alone. Hence, the impugned order is set aside," said a Bench of Justices H L Dattu and C K Prasad."*[31]

Earlier, following the Allahabad High Court order,

> *"…the I&B Ministry had issued an advisory to all "private satellite TV channels" to "strictly follow" the High Court's order."*

Arguing in the Supreme Court for the PCI, Senior counsel Mr. P P Rao urged that the High Court order was contrary to the basic principle of the rule of law and that the Press Council was greatly disturbed by the order as it was its mandate to protect the freedom of press. Even the Additional Solicitor General Ms. Indira Jaising agreed that the restriction on media was excessive.[32]

Sahara v. SEBI: Self-Regulation and doctrine of postponement

On September 11, 2012, a Constitutional Bench of the Supreme Court decided not to frame guidelines for reporting of court proceedings by the media.[33] Earlier this year in February, while hearing a matter related to Sahara and SEBI – regarding providing security for the liabilities incurred by Sahara to the holders of Operationally Fully Convertible Bonds – the SC had indicated to the parties to reach a consensus, through their lawyers, to an acceptable security in the form of an unencumbered asset.

Sahara's lawyer, Mr Fali Nariman, wrote a letter to SEBI's lawyer, Mr Arvind Datar, in Chennai enclosing the proposal. The same proposal was communicated by the Advocate-on-Record for Sahara to the Advocate-on-Record for SEBI that very day. A business news channel CNBC-TV18, a part of the Network18 Group, aired the contents of the said proposal.[34] Mr Nariman raised this issue in the SC that as to how the proposal – confidential in nature – reached the media. SEBI denied any role in making the proposal available to the media. SEBI's lawyer Mr. Datar and its counsel before the SC, Mr. Pratap Venugopal, also denied any role. Interestingly, the CEO of Network 18, Mr. B. Sai Kumar, declined to comment and said that he had no knowledge of the developments.[35]

Mr Nariman, on the suggestion of the SC bench, filed an application praying for making guidelines to be followed by the media in reporting *sub judice* matters. SEBI made a similar

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[31] Troops movement: SC quashes HC gag, *The Indian Express*, September 15, 2012. Data retrieved from http://www.indianexpress.com/news/troops-movement-sc-quashes-hc-gag/1002788/0 on September 17, 2012.
[32] *Idem.*
[33] SC refuses to frame guidelines for reporting court proceedings, *Business Standard*, September 11, 2012. Data retrieved from http://www.business-standard.com/generalnews/news/sc-refuses-to-frame-guidelines-for-reporting-court-proceedings/54932/ on September 17, 2012.
[34] Sebi-Sahara Hearing | SC takes exception to reporting of case, *Live Mint*, Feb 10, 2012. Data retrieved from http://www.livemint.com/Politics/X8DX6CbkWEQ9ljTmnJbMzJ/SebiSahara-Hearing--SC-takes-exception-to-reporting-of-cas.html?facet=print on October 5, 2012.
[35] *Id.*

prayer. It was in this background that the SC pronounced its judgement on September 11, 2012. In the judgment, the court observed that the media should follow a self-imposed restriction and should by itself know where to draw the line, however, the court made it clear that in certain cases in which the matter is sensitive and too much reporting by the media may have an adverse impact on the proceedings in the court, the court may order postponement of reporting by the media of proceedings of such cases.

The court said that the *doctrine of postponement* was only a preventive measure and neither punitive nor prohibitive. The Constitution provides the freedom, however this freedom is not absolute, and reasonable restrictions can be imposed by the State on certain grounds mentioned in the Constitution, which primarily are for the larger interest of the People of India. The SC made it clear in the decision that the restriction imposed – postponement of reporting in certain cases –was well within the meaning of reasonable restrictions.

The most important aspect of this judgement is that the court upheld the fundamental right of freedom of speech and expression of the citizens of India by refusing to frame guidelines across the board, and at the same time did its bit towards the societal interest by using the *neutralising technique* of postponement of reporting. It should also be noted that this postponement is not a matter of right, but to avail it, a petition has to be filed in the appropriate court and the judge in that court would exercise judicial discretion while making the decision. Thus, postponement will not happen on its own. Hence, one can conclude that free speech is the norm – as interpreted and upheld by the SC – and postponement is only an exception.

Mumbai Terror Attack, November 2008: Irresponsible Media Coverage

On November 26, 2008, Mumbai witnessed one of the worst terror attacks in the history. Terrorists from across the border stormed the city from the sea route and started shooting indiscriminately and captured a couple of high-end hotels in the city including the Taj hotel. The attack was covered by the media completely and at times, negligently and callously.

One of the news channels, Times Now broadcasted live coverage with Mr Arnab Goswami, a senior journalist as the anchor.[36] He established contact through mobile telephone with one of the persons inside the hotel – Mr Krishna Das, Member of Parliament. Mr Goswami had a long conversation on telephone with Mr Das and sought from him graphic details of the entire unfortunate event. The audio input was broadcast live on the channel along with the video coverage of the exterior of the hotel with a fire at the top floor and the commandos trying their best to tide over the crisis.

As Mr Goswami kept asking questions seeking minute details – number of people in the room, which part of the hotel, old or new, etc – Mr Das kept on obliging by answering the direct queries and also furnishing further details.[37] The conversation between the two provided the location of 200 people in the hotel with great precision and accuracy. It was confirmed several times during the conversation. Presence of women and children in that particular group was also mentioned. Such reckless conduct of media, made The Telegraph to write:

[36] Times Now, November 26-27, 2008
[37] Criminal Mistakes of the Media during 26/11 Terrorist attacks in Mumbai, *Times Now*, November 26-27, 2008. Data retrieved from http://www.youtube.com/watch?v=ZB5oQktNVkg on September 17, 2012.

> *"The availability of news updates and live TV streams from Indian and foreign media is thought to have given the hostage takers an advantage in the two day siege. By early yesterday army commanders had realised the extent of the problem."*[38]

REINING-IN THE MEDIA

It is true that the constitutional position in India is that no one has absolute freedom of speech and expression. Irresponsible and careless coverage by the media – simply in its overenthusiasm to have more number of readers and viewers, and just to claim that it has been the first news channel to break the news – is not the way responsible news organisation should function. Unsurprisingly, in the recent past there have been serious attempts to rein in the media.

Gag the Media Bill, April 2012: Started With a Bang, Ended With a Whimper

In April, 2012, Ms. Meenakshi Natarajan, a first-time Congress Lok Sabha Member of Parliament from Mandsaur, Madhya Pradesh and a close aide of party General Secretary Mr Rahul Gandhi, proposed a bill to gag the media. She has been articulate in her political speeches. As reported by The Times of India,[39]

> *"First time Congress MP Meenakshi Natarajan was also eloquent in her ode to the supremacy of Parliament. "I am also a member of that standing committee before which the Lokpal Bill has been placed. We assured Annaji that we will give a Bill of which this country will be proud. But if in the rush to make a particular law the supremacy of Parliament is undermined, that is not to be tolerated," she said."*

While speaking in the Lok Sabha[40] on August 17, 2011, she urged the members to do what they were supposed to do – make laws. And, she pointed out that several laws needed to be made, viz., land acquisition, *benami* transactions, mining policy, women empowerment, whistle blowers' protection, judicial standards and accountability, laws seeking transparency and accountability, etc. She cautioned the members that if they did not do their job – making law – there would not be a vacuum. Other forces like social activists, civil society, etc. would move to fill the gap.

She had higher aspirations. She was not contented to be just a member of the House, but was ready to play any bigger role. And, the party sensed it correctly. Commenting on her willingness to be a puppet, the India Today[41] wrote:

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[38] Mumbai attacks: Terrorists monitored British websites using BlackBerry phones, *The Telegraph*, November 28, 2008. Data retrieved from http://www.telegraph.co.uk/news/worldnews/asia/india/3534599/Mumbai-attacks-Terrorists-monitored-coverage-on-UK-websites-using-BlackBerry-phones-bombay-india.html on September 17, 2012.

[39] Opposition rejects PM's contention on Anna issue, *The Times of India*, August 18, 2011. Data retrieved from http://articles.timesofindia.indiatimes.com/2011-08-18/india/29900196_1_civil-society-anna-hazare-lokpal-bill on September 17, 2012.

[40] Lok Sabha TV, August 17, 2011. Data retrieved from http://www.youtube.com/watch?v=G3sITIeKd_Q on September 17, 2012.

[41] The Sword of the Censor, *India Today*, May 4, 2012. Data retrieved from http://indiatoday.intoday.in/story/print-and-electronic-media-standards-and-regulation-bill-rahul-gandhi-meenakshi-natrajan/1/187347.html on September 17, 2012.

> *"In the case of Meenakshi Natrajan and the Private Member's Bill, the messenger is as important as the message. First-time MP Natrajan is not naive. She is a key member of Rahul Gandhi's team. So when she drafted the Print and Electronic Media Standards and Regulation Bill that contained a series of draconian measures to gag the media, her own colleagues were left wondering if this was her own initiative or a command performance. The language of the draft displayed a seasoned legal hand and Natrajan is no constitutional lawyer… During the Congress session in Burari in 2010, both Rahul and Sonia Gandhi listened patiently when Natrajan took the dais. Apart from sycophantic praise of the Gandhi leadership, she had little else to say. Despite her apparent inability to think outside the box, there is little doubt that she is a Gandhi family favourite."*

As there were strong protests and the mood was without doubt against the bill, Ms. Natrajan did not muster enough courage to introduce it in the House. She did not even turn up on that particular day. Thus, the bill was nipped in the bud. India Today concluded the article with the parting shot:

> *"There is a lesson here for Natrajan and her mentors. Making legislation can be tricky business."* [42]

According to political experts and commentators, this bill could have been a "trial balloon"[43] as the Congress distanced itself without delay.

The bill - Print and Electronic Media Standards and Regulation Bill, 2012 – however, aimed at:

> *"…to provide for the constitution of the Print and Electronic Media Regulation Authority with a view to lay down standards to be followed by the print and electronic media and to establish credible and expedient mechanism for investigating suo motu or into complaints by individuals against print and electronic media, and for matters connected therewith or incidental thereto".*[44]

The bill talked about the fundamental principles of the Constitution and wished to protect national interest. It stated:

> *"The rights conferred by the Constitution are sacrosanct and should be respected. However, news value has been dwindling every passing day...While the freedom of speech and expression has to be respected, there appears no other option but to regulate the print and electronic media and impose on it certain crucial reasonable restrictions, which are needed for the purpose of protecting national interest…"*[45]

The bill sought to set up a Media Regulatory Authority with immense powers: exemption from RTI, power to ban coverage of an event, selection committee of three members to be

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[42] *Ibid.*
[43] Cong distances itself from Bill to regulate media, *Livemint.com*, April 30, 2012. Data retrieved from http://www.livemint.com/2012/04/29223037/Cong-distances-itselffromBil.html?atype=tp on September 17, 2012.
[44] A Bill and its meaning, *Frontline*, Volume 29 - Issue 10: May. 19-Jun. 01, 2012. Data retrieved from http://www.frontline.in/fl2910/stories/20120601291001200.htm on September 17, 2012.
[45] Ban & seize: Congress MP Bill out to gag media, *The Indian Express*, May 1, 2012. Data retrieved from http://www.indianexpress.com/news/ban-&-seize-congress-mp-bill-out-to-gag-media/943799/0 on September 17, 2012.

selected by the Central government, prohibition of reporting of any news item based on unverified and dubious material, clear segregation of opinions from facts, prohibition of reporting of any news item which was obscene, vulgar or offensive, power to search and seize any document kept secretly at some secluded place, and no jurisdiction of civil courts on the Authority.[46]

What prompted Ms. Natarajan to draft such a bill? One of the important reasons she mentioned had been the coverage of 2008 Mumbai terror attacks by the media. The Frontline[47] wrote:

> *"She argues in the statement of objects and reasons of the Bill that the freedom of speech and expression guaranteed under Article 19 of the Constitution comes with the caveat of "reasonable restrictions". She expounds: "In various instances, that while the print and electronic media has taken shelter for reporting and misreporting under this Article, it has forgotten the caveat attached to this right." She argues that the media have been unable to self-regulate their functioning and that the coverage of the 2008 Mumbai terror attacks was conducted in a way that compromised the police operation. "While the freedom of speech and expression has to be respected, there appears no other option but to regulate the print and electronic media and impose on it certain crucial reasonable restrictions, which are needed for the purpose of protecting national interest.""*

As of now, the bill has been shelved, but there may be similar attempts in future by the government of the day and media freedom might be challenged and threatened.

Press Council or Media Council, August 2012

On August 27, 2012, the Press Council of India passed a resolution and asked the Union Government to amend the Press Council Act of 1978. It asked the government to bring the electronic media and social media within its purview and also to rename the Press Council as the "Media Council." Interestingly, the resolution also said that:

> *"In recent times experience has shown that the unregulated electronic media is playing havoc with the lives of people. An example is what happened to the people of the northeast."*[48]

The resolution was referring to the exodus of the people of North East in August from a couple of cities in India, particularly Bangalore and Pune. Social media – Facebook, Twitter, etc. – was largely blamed for this. The government immediately imposed restrictions on the number of SMS and MMS during the mass exodus in August 2012. The Hindustan Times reported:

> *"Amid the continuing exodus from Bangalore, Pune and other cities, Parliament on Friday (August 17, 2012) assured people from the Northeast of their safety and the government blocked bulk SMSes and MMSes for 15 days to keep rumour-mongers*

[46] *Ibid.*
[47] *Ibid.*
[48] PCI wants law changed to bring TV, social media under its umbrella, The Hindu, August 28, 2012. Data retrieved from http://www.thehindu.com/news/national/article3832839.ece on September 17, 2012.

> *under check. Both Houses expressed concern over the insecurity in the community following threats of attacks."*[49]

These incidents made the Press Council bold enough to pass the earlier-mentioned resolution. When the Press Council Act was made in 1978, there was only print media. Electronic media and social media were a good fifteen years and thirty years away respectively. Observations made by the Press Council Chairman, Justice Markandey Katju, made it amply clear that he was not happy with the situation and would have liked more powers for the council. He didn't believe in self-regulation. As reported in The Hindu, he said:

> *"Experience has shown that the claim of the broadcast media for self-regulation is futile and meaningless, because self-regulation is an oxymoron."*[50]

In an interview[51] in April 2012 he had explained that 'regulation' and 'control' were two different things. He was all for regulation. And, self-regulation, according to him, was of no use. He had further argued that if self-regulation was sufficient, there wouldn't have been any need of a penal code and penal provisions for theft, murder, rape, etc. Everyone would have easily self-regulated.

Since Justice Markandey Katju took over as the Press Council chief, he had been insisting on giving more powers to the Press Council. He had unequivocally spoken on several occasions that the media in India was not playing its due role and that the media should have conducted itself in a responsible manner by focusing more on the socio-economic aspects of the society and highlighting the real issues plaguing India, rather than trivialising such issues and paying more than necessary attention to films and cricket.

CHALLENGES AHEAD

Most of the challenges being faced today are either related to advancements in technology or the human behaviour. Talking about the former, technology is making such fast and unthinkable changes in our lives that privacy and confidentiality are slowly but surely losing their earlier meanings. With the advent of social media and the large number of people sharing different facets of their life on the social media platforms, it is difficult to ask for privacy, as one cannot have his cake and eat it too. As earlier discussed in the paper, technology is providing access to boardrooms – supposed to be inaccessible to everyone except the top management – is so easy, it makes one shudder even at the thought of what can be level of confidentiality and secrecy left in ordinary office spaces.

Besides the technology there are the challenges posed by human behaviour – greed and the willingness to do anything to go ahead in the rat race of life. This is not new, but is extremely difficult to be tackled by legal tools for the simple reason of lack of evidence in most of the cases. If we talk of instances of insider trading, leakage of confidential information to the media by top business persons, and similar other occurrences, it would not be difficult to realise that these conversations and transactions are never recorded. And, in the absence of any such evidence, it is next to impossible to take a legal recourse.

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[49] Centre bans bulk SMSes, MMSes; Northeast exodus on, *The Hindustan Times*, August 17, 2012. Data retrieved from http://www.hindustantimes.com/India-news/NewDelhi/Centre-bans-bulk-SMSes-MMSes-Northeast-exodus-on/Article1-914995.aspx on September 17, 2012.

[50] *Ibid.*

[51] Newsx@9. Data retrieved from http://www.youtube.com/watch?v=VoJ1SSE4Y-8 on September 17, 2012.

Reporter's privilege and demand for more and more media freedom makes it really difficult to compel any journalist to disclose the source of confidential information. The courts also find it impractical, and also onerous, to use the provisions of law for disclosure in a democratic society. However, for the sake of public interest and social good, it is the duty of the courts to insist on the execution of the available laws, which requires judicious exercise of discretion.

Exercise of Discretion by Courts

A pertinent question which arises for consideration in the *Sahara*[52] case is: when a confidential proposal was communicated by Sahara to SEBI, how come CNBC – TV 18 got to know of it? It could have only been possible if there was a breach of confidentiality by either of the parties, including their lawyers and everyone else who had knowledge of the proposal and also access to it. Or, it could have been the result of investigative journalism by the news channel. In the first scenario, it could have been either anyone from SEBI or anyone from Sahara who might have leaked the confidential proposal to the media. It could have been either due to negligence of any person who had access to the document or it might have been intentionally and wilfully leaked. If it is a case of negligence, the question arises as to what level of care was expected from the person who had access to the document. Was it a case of gross negligence or simple negligence? In case it was done by CNBC – TV 18, either by getting information through a mole, or spying by using advanced technology, or some other method, it needs to be analysed as to whether it crossed the legal or ethical limits or both.

It is a bit surprising that the Supreme Court did not force the news channel to reveal the source from where it got the confidential document. It would have been well within the legal limits for the SC to do so. Instead, the SC, exercising wide and wise discretion, decided to constitute a Constitutional bench to lay down guidelines for the media for reporting matters which were *sub judice*. After the judgement has been pronounced, it appears that the SC started with great and noble intentions, however, with the passage of time, somehow and somewhere the steam was gone, and the judgement – though a landmark one, vindicating the freedom of speech and expression – appears to be nowhere near the original objective it started with. Rather than laying the guidelines, the judgement relies on self-regulation, leaving the field wide open, and confers tremendous discretionary power on the courts regarding postponement in reporting *sub judice* matters. It is, in all probability, going to add a lot of confusion and litigation also.

CONCLUSION

In the fast changing business environment in India, it is extremely important that the media conducts itself with due maturity and responsibility and draws the *Lakshman Rekha* for itself regarding news in general and corporate matters also. The role of media – the fourth estate – is fast changing with latest developments in technology and easier and faster access to all sorts of news items. In such a scenario, the media has to play the vital role of bringing the desired information from all quarters, including the corporate sector, within the knowledge of the public.

[52] *Supra.*

In a democratic country, information, rather updated information, is essential to be disseminated to all and one. In case the media fails in disseminating the true, correct and complete information about the corporate sector, it becomes difficult for the public to understand and appreciate the true nature in which any company might be conducting its business. Many journalists know a lot about different companies, but in case they make it a point not to convey either any information or complete information to the people, then they would surely be failing in their duty of a journalist. So, it is not only the issue of protecting the identity of the confidential source, however, it is also important for the media not to conceal from public any relevant and reasonable information.

Enacting any legislation to curb media freedom is not answer. On the contrary, it has to be much more open, transparent and well-informed society. Interpretations of any existing law by the courts will hopefully be in this direction. A fine balance needs to be achieved and it is not possible to do that only through legal recourse. A concerted effort on the part of the media, government and businesses is the need of the hour.