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Free press and the laws of defamation, contempt and sedition

by

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INTRODUCTION

Good morning everyone. It is always a pleasure to be in the city of Chennai, where I lived and worked for several years. And it is a pleasure to be at the Asian College of Journalism once again. This is the second time I have been invited by the ACJ, having earlier visited when I was Chief Justice of the Madras High Court.

The last time I came here, when also I delivered a speech, I had had occasion to speak about a matter involving Arundhati Roy and the Supreme Court, where she had been been convicted for making certain remarks about the judiciary in general and the Court in particular. I was in entire agreement with Ms Roy's position, and happened to make certain observations about the case during my speech at the ACJ. These were not prepared remarks, and although it resonated with the audience in many ways, the powers that be may not have taken it in kindly light. I understand that the ACJ decided to redact these remarks when the published version of the speech was made available thereafter, to protect me from the wrath of the Court! I am no longer a sitting member of the judiciary, and although my institutional loyalties remain, I am also more free to be critical of my institution, something that I fear my brethren on the bench cannot do often enough, because of their position.

But I must stop speaking of the past. Today is about all of you. I must begin by congratulating all of you on graduating from the College and entering the world of journalism as professionals. As graduates of ACJ, you are also beholden to the principles they uphold - of a free and independent press representing diverse views that are vital to the functioning of democracy, to the pursuit of public welfare, and to the protection of the people's entitlements. This is a heavy burden to bear, but I am confident each and every one of you will ensure that these principles remain secure.

As the future of Fourth Estate, I am sure all of you realise the incredible amount of power you hold in your hands. When the 19th century historian Thomas Carlyle described the press as the Fourth Estate, which phrase he, in turn, attributed to the politician Edmund Burke, he

saw the journalist as a newly empowered member of society, playing foil to the existing three "estates" of the clergy, aristocracy and the commons. Later, of course, with more modern theories of government coming into being, these were replaced by the legislature, executive and the judiciary. The truth is that the press is no longer merely a foil to the three parts of government. While it continues to act as an institution that checks and balances the other three, indeed, it is a powerful and influential institution in its own right.

The press is a watchdog, monitoring everyone and everything else around it, but also a determinant of public opinion. It can change public moods and perceptions in an instant, and compel other institutions to change tack overnight. For decades the press meant only the print media, but with the radio and television boom, and now, the internet revolution, the scope and breadth of the press has expanded beyond imagination. In India, today, the 24-7 live coverage offered by the audio-visual medium has the capacity to evoke responses and emotions in ways that typescript can never compete with.

The press can expose individual and institutional vulnerabilities. It can communicate important messages from the government to the public but also vice versa. It can also instil fear among those who refuse to act in certain ways, or who appear to engage in wrongdoing. In this sense, the press acts as the keeper of moral sensibilities, the bearer of information, the determinant of public sensibilities….

Arguably, no other institution wields this kind of power. This is reason enough for all of you to treasure and respect your role more, and to ensure that you play your part with responsibility and care. Abuse or recklessness in wielding this authority can not only bring disrepute to you as an individual, but can tarnish the profession once and for all.

Wielding so much power can be a heady feeling, and can destabilise the ones that possess it. In the frantic competitive race for public validation, popularity, advertising revenue, sometimes the press falls into the trap of engaging in poor journalism. This manifests itself in many forms. For example, it could be in the form of a trial by media, where the

press decides to play judge and jury all rolled into one, and before a person is even formally accused of a crime, that person may have been convicted and hanged by the press. Or it could be in the form of treating news as business, as a direct consequence of shareholder pressures to meet bottom lines. The difference between genuine news and paid inserts are slowly vanishing in many corners of the journalistic world. News as a commodity that is consumer-driven rather than anything else is incredibly disturbing for it compromises on the information that members of the public have access to, and directly impacts the kinds of decisions that they can make.

Indeed, I worry most of all that the free press as we know it in theory is under threat today. This threat mainly comes from certain sections of the electronic media. Some news anchors and hosts operate in clearly partisan ways, they are belligerent and aggressive, rather than probing or incisive. I worry that most of the time they do not seek to learn the truth, but instead decide that they know the truth already, and merely seek to destroy others who may have an alternate perspective of the truth. I worry that we forget that India is the country that gave the world the story of the blind men and the elephant. It was our philosophical forbears who recognised that there is no one singular perfect truth, and that everyone can have a valid perspective. The task of piecing together these perspectives and crafting a single truth is an onerous one, and that is the task that the press ought to be performing. Instead, we have journalists who decide, on the basis of a single testimony or an isolated incident, that it is their duty to taint an entire academic institution. Indeed, it is more worrying that in India today, the idea of the journalist as someone outside political spheres is fast disappearing. The idea of the journalist and the politician has conflated to a degree that political parties are today able to manipulate public opinion through their access to and command over the press.

This is why I speak to you today, and this is what I want to talk to you about. As members of the press, it is absolutely essential that you understand the rules of the game. Political manipulation is unmistakeable most of the time, but occasionally, it also disguises itself

in clever ways. In ways that threatens the very idea of your existence as a free and independent institution. Most often this takes the form of oppressive laws designed to silence freedom of thought, speech and expression. Whether it is laws of defamation that decide when you can make remarks about a person's reputation, or whether it is the laws of contempt that determine when you can be incriminated for being disrespectful of the judiciary, or whether it is the laws of sedition that decide what it is that you can say about the state -- all of these are routinely and increasingly and worryingly used against especially the press in India today. I believe the reason why these are used so frequently and at such growing frequency is because the members of the press are often ignorant about what the law actually says, or what their own powers themselves are. I want to use this opportunity to talk about some of these laws and questions, with a view to explaining to you what it is that you can do to ensure that you are on the right side of the law, in a manner that does not emasculate your power and freedom to act as an independent, non-partisan, critical institution.

DEFAMATION

The first set of laws I want to talk to you about is that of defamation. Having been students in this part of the country, I am sure you have heard of defamation often enough, for it is one of the most favourite pastimes of politicians in Tamil Nadu. They are notorious for filing cases for defamation every time anyone writes or says anything that may be critical of their actions. So much so that the Supreme Court, in August 2016, was compelled to make observations about the Tamil Nadu government for using defamation cases to "throttle democracy", instead of focusing on "good governance". It pointedly noted that no other state misuses state machinery like the Tamil Nadu government.

Apparently, in the previous five years, the AIADMK government had filed 131 defamation cases against various persons for criticising the government and its policies, of which 55 cases were against the media alone! In an earlier case involving the DMDK chief A Vijayakanth, who was facing 14 defamation cases for criticising the working of the state

government, the court had said merely calling a government corrupt or unfit did not warrant a defamation case in return. Indeed, the court was right in observing that such cases had a "chilling effect" on the exercise of free speech, and there had to be tolerance to criticism.

But what is defamation exactly? In law, defamation usually refers to the disparagement of someone's reputation, caused by false or unjustified statements made by someone else. Depending on the circumstances, it can be either a civil wrong or a criminal offence. For instance, in civil defamation, the intent of the person making the statements does not usually matter, unlike in criminal defamation, where the person must be shown to have *wanted* to defame the other individual. But these are technicalities I do not want to drown in.

As journalists, it is important for you to understand how defamation tends to be used in India. Because reputation is the "thing" at stake here, it is a legal tool for the rich and the powerful, who have the most to lose when their reputation is affected. Therefore, not only are powerful governments abusers of this law, but also the corporate moneybags, who wield immense economic and political power today.

You may have heard of the phrase, "publish and be damned!". It is attributed to the Duke of Wellington when he received threats that private details about him were going to be *published*, and means, that "you can *publish* if you like, I don't care". The memoirs in question were consequently published, but the Duke of Wellington's reputation did not suffer. He was not forced to resign or anything else. On the contrary, he remained the nation's hero and went on to become prime minister. But in our own modern aristocracy, the politicians and the businessmen remain in constant fear of the published word. Recent examples of defamation cases targetting investigative journalism abound: Hamish McDonald's *The Polyester Prince* (about the Ambanis); Paranjoy Guha Thakurta's *Gas Wars* (about Reliance and gas production and pricing in India); Tamal Bandyopadhyay's *Sahara: The Untold Story* (about Subroto Roy's empire); Jitender Bhargava's *The Descent of Air India* (which criticised former aviation minister Praful Patel for his role in the airline's financial collapse)...

This pattern of powerful and influential entities suing members of the press, or investigative journalists, is not uncommon. Indeed, there's a term for these kinds of defamation cases: these are called SLAPP lawsuits, where SLAPP stands for "Strategic Litigation Against Public Participation". The precise objective of these lawsuits is to use the law, and in all of these case, defamation in particular, to prevent the public from criticising or learning about public affairs. These lawsuits seek to censor, intimidate and silence critics, using the threat of legal action, until they abandon their criticism or opposition.

That is the most terrifying aspect of SLAPP lawsuits. Those who file these cases rarely expect to achieve any significant victory in monetary terms. Victory is achieved through mere silencing criticism. And indeed, Indian courts have rarely, if ever granted punitive or exemplary damages. But this *threat* of a high liability becomes the sword hanging over every critic's head, and results in a chilling effect on investigative journalism.

One instance where such damages were granted was in 2011, when a civil court in Pune directed the owners of the *Times Now* channel to pay Rs 100 crores in damages for having mistakenly shown - for a few fleeting seconds - the photograph of a retired Supreme Court judge in connection with a scam, whereas another retired judge with a similar sounding name was involved. In appeal, the High Court asked the channel to deposit Rs 20 crores and furnish a bank guarantee of Rs 80 crores. The Supreme Court did not interfere with this order. These sums of money are utterly ridiculous, even for a big media house. Imagine if a smaller media house were involved - they would probably not be in existence today.

This use of defamation with impunity, especially against the media, is hardly unique to India. But other countries have dealt with it with some maturity and sensitivity. The first example I want to discuss is from the United States. In the 1960s, an Alabama court awarded a police officer half a million dollars in damages against the New York Times for having published an advertisement, which apparently contained some factual errors. A subsequent claim of 3 million dollars was made against

the newspaper, which, if awarded, would have put the newspaper out of business. Instead, the New York Times v. Sullivan case changed the course of defamation law. The court noted that "debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials," and in order to survive, free speech needed "breathing space", or the space to make mistakes. The result was the "actual malice" principle for defamation cases, where defamation could exist only if the person making the statement either knew it was false, or published it with reckless disregard for truth or falsity. Since 1964, when this decision was delivered, the press has not lost a single defamation lawsuit in the United States.

South African courts follow a principle that is a slight variation on this, introducing the idea of unreasonableness. When a person alleges defamation, that person must prove that the statement was not only false but also unreasonable. The UK Defamation Act of 2013 provides a specific exemption for statements of "a matter of public interest". Thus, if you notice, from a global perspective, the law has built up incrementally over time. The US originally asked proof of actual malice; South Africa introduced unreasonableness; and the UK moved to a public interest exception.

In India, sadly, the principles of defamation are yet to be cast in stone, and courts continue to construe it in many ways, leaving room for a great many interpretations, and corresponding doubt and confusion. The best known Indian cases so far on defamation is perhaps that of R Rajagopal v State of Tamil Nadu. Note the continuous Tamil connection here. In this case, a Tamil magazine wanted to publish the autobiography of Auto Shankar, a convicted and imprisoned serial killer. Apparently the publication was being carried out without his consent. The manuscript also contained defamatory statements about the police and IAS officers. Thus, everyone wanted to prevent the book from being published. The Supreme Court followed the "actual malice" principle from the US courts, and made special reference to alleged defamatory statements made against public officials. It sai:

> *"in the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages, is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth".*

Thus, the court concluded that government officials could not sue for defamation relating to their official functions, unless a really high standard was met. This is essentially being followed by various Indian courts, notably the Delhi High Court. One case that is particularly interesting involved Tata and Greenpeace. The international NGO had made a Pacman-like game, where creatures containing the image of the Tata logo were trying to chase down a turtle. The idea behind the game was to highlight certain activities of Tata that were affecting Olive Ridley turtles in the Arabian Sea. Tata argued that the game was defamatory in nature. But the court was quite emphatic in its conclusion that there was no defamation, and that if it were to grant the injunction that Tata sought, it would amount to freezing the entire public debate on the effects of the conglomerate's projects on the Olive Ridley turtles, which in turn would serve no public interest.

Another noteworthy decision of the Delhi High Court was in Ram Jethmalani vs Subramanian Swami where Swami accused Jethmalani of receiving money from the LTTE Jethmalani suit for liable. The Court citing New York Times vs. Sullivan and Rajagopal dismissed the claim. Again in Petronet wherein injunction were sought against the website the Court refused the prayer saying, "……the right to disseminate these views is at the core of freedom of speech and expression and any restrained would have chilling effect on its exercise.

The law on defamation, therefore, exists in India, as developed through cases like these.

I must point out that all of this pertains still to civil defamation. The subject of *criminal* defamation has taken on a life of its own. In the 2016 judgement in the case of Subramanian Swamy v. Union of India,

for example, the Supreme Court decided that the right to reputation was a fundamental right under the Constitution, and could be enforced through criminal sanctions.

As a civil offence, defamation is linked to an individual's loss of reputation. But as a criminal offence, it is associated with breach of peace, or violation of public order, and penalties seek to deter people from making statements that would lead to such disorder. A criminal case is one that puts the maker of the statement under threat of imprisonment. The offence of criminal defamation is fraught with problems of its own. Surely, this threat to civil liberties is much greater than a civil claim for compensation. In many countries, especially in the United Kingdom, from whom we inherited the offence through the Indian Penal Code, criminal defamation has been abolished completely. Even in the most unlikely of places, this law has been held to be an anomaly. The Constitutional Court of Zimbabwe held criminal defamation to be an unconstitutional violation of the freedom of speech. And very usefully, the court pointed to the chilling effect of possible imprisonment, as well as the futility of having a criminal provision, when a civil offence already existed.

What does all this mean to you - as investigative reporters, as RTI activists, as government critics? While you need to know how the law of defamation can be used against you, you must also learn about how you can engage with the law. The courts have repeatedly upheld the principle that if you are able to demonstrate that a statement is not reckless and not unreasonable, no case of defamation can be made out against you. In many ways, this is embedded in journalistic ethics already, where truth and accuracy are foundational pillars of good journalism. If ever you have occasion to confront someone on the issue of defamation, and if there was no malice aforethought on your part, you must not be scared or frightened. Instead, you must view it as an opportunity to help the court craft a new jurisprudence on defamation - one that is reasonable, practical and does not unduly shackle free speech or the idea of a free press.

CONTEMPT

Where the offence of defamation tends to be used against the press most often by public authorities, and increasingly, powerful private players, there is one tool that is used often by courts. This is the tool of "contempt of court". The courts, as political theorists saw it, are the feeblest form of government. They possess neither force nor will, and have control over neither sword nor purse, as Alexander Hamilton, one of America's founding fathers put it; instead they must rely only upon judgement. Shorn of any powers or control, when courts believe that their effectiveness is under threat, they resort to using contempt as a weapon against dissenters. Indeed, judges themselves may be at the receiving end of the exercise of contempt as a weapon, whenever the court perceives that some statement is contemptuous. Two recent examples, both coincidentally of judges of the Madras High Court, are of Justice Markandeya Katju and Justice CS Karnan, who were hauled up for contempt of court.

Like defamation, contempt too is found in two varieties, civil and criminal. Civil contempt refers to the wilful disobedience of a court order, and is fairly straightforward, and does not warrant a discussion here. Also, there are several court decisions which make the position on civil contempt abundantly clear. The more problematic concept is that of criminal contempt. In India, it refers to an act or expression that "scandalizes or tends to scandalize, of lowers or tends to lower the authority of, any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner." The nuance lies in the interpretation.

In the United States, for example, in the case of Bridges v. California, a labour leader called a court decision 'outrageous' and threatened to call a strike if it was upheld. The court had to decide whether public interest could be overridden for preserving respect for the judiciary, and the orderly administration of justice. While deciding, crucially, that the discussion of public affairs could be restricted only if there was clear and present danger to the administration of justice, the court also made

an important observation that our own judges would do well to pay heed to. The court said, "an enforced silence, however, limited, solely in the name of preserving the dignity of the bench would probably engender resentment, suspicion and contempt much more than it would enhance respect."

In England, the last successful prosecution for "scandalising the court" took place in 1931. Indeed, in the UK, like in many other Commonwealth countries, the courts themselves have declared that "scandalising the judges… is virtually obsolescent… and may be ignored".

The one case that symbolises this attitude of the English judiciary is what we now know as the Spycatcher case. As with so many other cases, two media houses were involved. The Guardian and The Observer were restrained from printing material from the memoirs of a member of the British secret service, where he alleged that MI5 had plotted to assassinate Nasser, and destabilise the Wilson government. Meanwhile, a host of other newspapers - the Independent, the London Daily News, the London Evening Standard, the Sunday Times - all published the allegations. No restrictions had been imposed by the courts against these newspapers, and they had obtained the information independently. The House of Lords nevertheless found them guilty of contempt of court, since their publication had negated the purpose of the injunctions. There are more complex layers to this case, but suffice it to say that the judgement was severely criticised. Later, the Daily Mirror published upside-down photographs of those who had passed the injunctions, under the headline, "You Fools!". No contempt action followed.

According to a story that eminent jurist Fali Nariman told, he was in London at the time, and happened to ask Lord Templeton as to why no contempt proceedings were initiated against the Daily Mirror. Lord Templeton apparently smiled, and said that judges in England did not take notice of personal insults, uttered without malice. After all, he said, he was old, and though he believed he wasn't a fool, someone else who sincerely thought he was, was entitled to his opinion!

In its 2012 report recommending the abolition of the crime of contempt, the UK Law Commission said that the law was originally intended to main a "haze of glory" around courts. It seemed, as the Commission noted, the "purpose of offence [was] not confined to preventing the public from getting the wrong idea about judges… [but] that where there are shortcomings, it is equally important to prevent the public from getting the right idea."

In India, unfortunately, these notions of "haze of glory" persist unto this day. When - and I must make reference to her again - Arundhati Roy wrote certain critical comments about the judiciary in its handling of the Narmada resettlement in her book, The Greater Common Good, Justice Bharucha magnanimously observed that the "court's shoulders were broad enough" to handle such criticism. But a few lawyers, who were observers to a demonstration in which Roy participated outside the buildings of Supreme Court, took umbrage at slogans that she had employed, and filed contempt proceedings against her. That case was dismissed, but the court, on its part, took offence at at statements she had made in her affidavit filed in response to the petition. Among other things, she said, "By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm." She continued,

> *"If the judiciary removes itself from the public scrutiny and accountability, and severs its links with the society that it was set up to serve in the first place, it would mean that yet another pillar of Indian democracy will crumble. A judicial dictatorship is as fearsome a prospect as a military dictatorship or any other form of totalitarian rule"*

Eventually, the court let her off with symbolic imprisonment and a fine of Rs 2000, but ought they to have conducted these proceedings against her at all? Where did the court's broad shoulders vanish in these circumstances.

Most discomfitingly, libel against even an individual judge can constitute criminal contempt of court, if the allegation is so grave that it erodes public confidence in the system. This was the conclusion drawn by the Supreme Court in a 1996 cases of DC Saxena v. Chief Justice of India. Until recently, neither truth nor good faith were available as valid defences against contempt in India. However, with the 2006 amendment to the Contempt of Courts Act, 1971, this has changed. This was, however, not followed in the Mid-Day case, where the Delhi high court sentenced employees of the publication for contempt of court for publishing content that portrayed a retired Chief Justice of India unfavourably. Mid-Day raised the defence of truth and good faith, but was not entertained.

All of you may well ask, what has all this got to do with you. If you have paid close attention to the stories I related in relation to contempt, the biggest critics of the court are among members of the press. This is the watchdog role you play. Mind you, there are many more such examples that have taken place over the years, I merely picked out the better known ones for you to hear. You must ensure that the press is permitted to have its fair share of criticism, and call out the courts when they ought to be. Courts, on their part, must be more restrained in their use of contempt proceedings as a tool. When you, as journalists believe, such restraint is not being exercised, you must point that out. In the UK, for example, recently, when some people challenged Brexit in court, several death threats and online abuse were directed against them. On its part, the court was urged to remark that the behaviour of those issuing such threats could amount to a contempt of court. But any fear that the court may invoke contempt proceedings must not hold you back. It is your duty, your responsibility, your obligation, to ensure that the court is informed of its poor judgement. Indeed, the Supreme Court itself has said that fair comment of this nature is protected under the right to freedom of speech and expression, and the press must use this protection to the fullest, to balance the power of the court.

SEDITION

Sedition is a word, almost everyone in India has heard of today, because of the events at JNU last year. Historically, our conversation around sedition was focused on British injustice in imprisoning Tilak and Gandhi for their publication of allegedly seditious material. Tilak, before his arrest in 1908, reportedly told a police officer, "*The government has converted the entire nation into a prison and we are all prisoners. Going to prison only means that from a big cell, one is confined to a smaller one.*" Gandhi, in 1922, pleaded guilty to the charge of sedition, stating that he was proud to oppose a Satanic government.

Today, any academic discussion on sedition will invariably make reference to the British misuse of this law, and the way in which our freedom fighters opposed them. But it is deeply saddening, that almost a century later, today, the law is being used against young adults - university students - for doing what students at a university ought to feel *entitled* to do – debate, disagree, and challenge each other on complex, political issues that face the nation today.

The original 17th century argument to enact the law of sedition was to protect the Crown and the State from any potential uprising. The argument made was thus: people could only have a *good* opinion of the government, whereas a *bad* opinion negatively affected the functioning of the government and the monarchy. This was the law that came into India as well.

It is interesting that even in India, as in many other parts of the world, the law of sedition was historically used against the press. In many ways, this is a testimony to the power of the press itself, for only a creature as influential as the press could sway public opinion in a way that the state would be concerned by. Among the early Indian cases, Bal Gangadhar Tilak was tried for sedition twice - the first in 1897, for his lectures and songs at the Shivaji Coronation Ceremony; and the second, in 1908, for the publication of a critical article in his magazine *Kesari*. In the Kesari ruling, the Bombay High Court while convicting him, ruled that no one was permitted to "*attribute dishonest or immoral motives to the Government*."

Gandhi's trial for the offence of sedition also involved his role in the press, specifically for his articles in the *Young India* magazine. The trial itself was remarkable for his decision to plead guilty to the charge of sedition and Justice Broomfield's reluctance to sentence him, because he did not believe that Gandhi deserved to be charged with sedition in the first place.

When India became independent, our Constitution did not include sedition as a ground for restricting free speech, although at least two attempts were made during the Constituent assembly debates. Members feared that sedition would be used to crush political dissent. But soon after independence, the First Amendment to the Indian Constitution was brought about, amending Article 19(2) to replace "undermining the security of the State" with "in the interest of public order". However, the offence of sedition remained steadfastly contained in Section 124-A of the Indian Penal Code, although not without Nehru stating that it was a "highly objectionable and obnoxious" section, and that "The sooner we [got] rid of it the better."

Over the years, the Supreme Court has delivered various decisions on the constitutionality of Section 124A. In *Kedarnath Singh v State of Bihar,* the Court upheld the constitutionality of sedition, but limited its application to "*acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence*." It distinguished these acts from "very strong speech" or the use of "vigorous words" which were strongly critical of the Government.

In 1995, the Supreme Court in *Balwant Singh v State of Punjab*, it acquitted the persons who had shouted slogans such as "*Khalistan zindabaad, Raj Karega Khalsa*" outside a movie hall a few hours after Indira Gandhi's assassination on charges of sedition. Instead of simply looking at the "tendency" of the words to cause public disorder, the Court held that "*raising of some lonesome slogans, a couple of times… which neither evoked any response nor reaction from anyone in the public*" did not amount to sedition, for which a more overt act was required. The Court recognised that the accused did not intend to "*incite people to create disorder*" and that no "law and order problem" actually occurred.

The law, therefore, is quite clear in distinguishing between strong criticism of the government and the incitement of violence. Only the latter is related to sedition. Thus, regardless of whether slogans are anti-national, hateful, or an expression of contempt and disdain against the government, as long as they did not incite violence, it does not get covered under sedition. But courts continue to understand and interpret it more widely, as in the case of the JNU students. In my view, the Delhi High Court's bail order unnecessarily invoked patriotism and nationalism.

Gandhi said, "*Affection cannot be manufactured or regulated by the law. One should be free to give full expression to their disaffection unless it incites violence.*" Unfortunately, the legal provision of sedition, as contained in Section 124-A allows the State to go after those who challenge its power, whether it is the JNU students, activists such as Hardik Patel and Binyak Sen, authors such as Arundhati Roy, cartoonists such as Aseem Trivedi, or the villagers of Idinthakarai in Tamil Nadu protesting against the Kudankulam Nuclear Power Plant. These examples are demonstrative of the misuse of the provision.

Even if the law is clear that mere sloganeering is not enough, and has to be accompanied by a call for violence, it is not required to be so established when registering the FIR or initiating criminal proceedings. As a result, sedition charges are easily made, but seldom stand the test of trial. Nevertheless, they cause immense harassment for surely, the process of having to undergo the trial itself is the punishment – and more importantly, the deterrent against any voice of dissent or criticism.

Like both defamation and contempt of court, sedition also produces a chilling effect on free speech and expression.

England, from whom we have inherited the offence of sedition, recently repealed the offences of sedition and seditious libel, along with defamatory libel, and obscene libel. In doing so, the Justice Minister, Ms. Claire Ward observed in 2009,

> "Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today…. The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom…Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."

This is a challenge of sorts to countries like India. If England has recognised the undesirability of laws of sedition, and removed it from the statute books, as inheritors of the same legal and political system, surely, we should repeal the law too. The law has been abused often in India, particularly so in recent times, by silencing dissent. The only way in which such misuse of the law can be prevented is by removing the source of the power itself. But no government will voluntarily give up this power. The one refuge is the judiciary, which we can hope may examine the constitutionality of sedition once again. But until that happens, if ever it happens, it is possible that the state will continue to use sedition as a weapon against dissent.

What do you as journalists do, in such cases? I bring you back to the examples I gave you a few minutes ago - the laws of sedition have most often been used against the press. Why? Because the state recognises the power of the medium. This is a power you should never be afraid to use, with sense, care and responsibility. In doing so, it is possible that the state may challenge you, and may attempt to quash your exercise of this power, by trying to silence you through making allegations of seditious action. But as with defamation and contempt, you must see this in positive light, and not succumb to pressure. Instead, you will be in the enviable position of helping courts and governments understand how important it is for you to have that right to dissent, that entitlement to question authority, and that freedom to speak your mind. Otherwise, the foundations of democracy that were laid in this country decades ago will have come to nought.

CONCLUSION

Which brings me to my concluding remarks. Besides being here to deliver this address, I have also, over the past few weeks, had the honour and pleasure of reading through the pieces of journalism shortlisted for the awards today. I must say that each and every one of the articles I read were outstanding in their own right, and selecting some over the others was an incredibly difficult task. Only a few of you have received an award and special mention today, but I must add that every one of you is a winner, because you have done precisely what exceptional journalism ought to do. You have not compromised on facts and accuracy. You have boldly, and without fear, lifted the veil on secrets that everyone else was afraid to tell. You have persisted with asking searing questions. You have changed the narratives of public dialogue. And most importantly, you have shown truth to power. In more ways than one, you embody the power of the media, and tell us, once again, how immeasurably valuable the idea of a free press is. In doing so, you are also role models for each and every professional emerging from this prestigious programme. I congratulate all of you for your past achievements, and hope that this will be only one of many more laurels to come. For those of you, who may not have won a "prize" of any kind today, know this, that you are members of an illustrious profession, and that badge of membership must be worn with honour and pride. I wish you all the very best.

Let me conclude with a few lines from the Economist recently written in condemnation of the statutory underpinning of a royal charter to regulate the press in the United Kingdom:

"We believe society gains more from a free press than it loses from the tabloid's occasional abuse of defenceless people….

Fleer Street does not have an impeccable record. It has broken the law and victimized innocent people. But it has also, time and again, exposed the lies and incompetence of politicians."

Thank You.

JUSTICE AJIT PRAKASH SHAH

Before his elevation, Justice Shah practiced in Bombay High Court for more than 17 years. He mainly appeared in civil, constitutional, service and labour matters.

Justice Shah was appointed as the Judge of Bombay High Court in 1992 and was later elevated to the office of Chief Justice Madras High Court and on transfer took over as Chief Justice, Delhi High Court on 11th May, 2008 till his retirement.

He has delivered some important judgments ranging on diverse issues such as: Application of the Right to Information Act to the office of the Chief Justice of India; Decriminalization of homosexuality; Freedom of Speech and Expression; Environment and Ecological matters; Protection of disabled person; Laws relating to women; Contract Labour; Child Labour; Employment Rights of HIV affected persons.

As a judge of the Bombay High Court and later Madras and Delhi High Courts, he had also dealt with large number of commercial cases including admiralty, company law, trademark and patent laws, arbitration, etc.

After retirement he was appointed as the Chairperson of the Broadcasting Content Complaints Council (BCCC), a self-regulatory body appointed by Indian Broadcasting Foundation. He also headed a Committee appointed by the Ministry in Planning Commission, Government of India, on Privacy issues, which drafted a report on Privacy law in India. He also headed a Committee on Direct Tax Reforms, constituted by the Ministry of Finance, Government of India, which submitted a report on Minimum Alternate Taxes on FIIs. He was a Member of the Governing Council appointed by Ministry of Law & Justice for Judicial Reforms. He is nominated as member in the Expert Committee of International Labour Organization for implementation of ILO Conventions by member countries. He is a Commissioner in the International Commission of Jurists. He headed the Twentieth Law Commission of India, from 2013 to 2015, which submitted 19 reports, including on the Arbitration and Conciliation Act; Commercial Courts; Electoral Reforms; and the Death Penalty.

Lawrence Dana Pinkham, a professor of journalism at the Columbia University Graduate School of Journalism and the University of Massachusetts-Amherst, was Dean of the Asian College of Journalism between 2001 and 2003.

A graduate of the University of Maine and the Columbia University Graduate School of Journalism, Larry Pinkham worked as a reporter for the Providence Journal, the Wall Street Journal, and United Press before joining the Columbia journalism faculty in 1956.

He remained at Columbia for 16 years, teaching print and broadcast journalism, and creating new programmes that aimed at updating the school's traditional curriculum.

During the student demonstrations against the Vietnam war and university governance in 1968, Pinkham joined with other Columbia faculty members in an attempt to protect the demonstrators from police violence. The attempt failed, and in protest he resigned from his position as director of the journalism school's broadcasting program.

Pinkham left Columbia for UMass in 1972, and served as chair of the institution's new journalism program from 1976 to 1981.

Pinkham was raised by working-class grandparents in Bangor, Maine, during the Great Depression. It was only after having enlisted in the Navy during World War II that, thanks to the GI Bill, he was able to attend college. In New York, he was introduced to progressive political ideas and came to understand that the social injustice he had witnessed firsthand while growing up was inherent in the capitalist system.

In his 19 years on the Massachusetts faculty, Pinkham divided his time between Amherst and China.

During a sabbatical year in 1979, shortly after the resumption of relations between China and the United States, he was invited to teach journalism in Beijing as a visiting professor at the Graduate Institute of Journalism, Chinese Academy of Social Sciences. Pinkham returned to teach in China several times, for a total of eight years.

In 2001, Pinkham accepted an invitation to serve as distinguished visiting professor and dean of the newly founded Asian College of Journalism in Chennai. His wife Joan Pinkham, who accompanied him, taught supplementary English at the ACJ.

Pinkham died on February 28, 2010 at Cooley Dickinson Hospital, Northampton, Mass., following a heart attack. He was 83.

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