

“Striking Balance between disclosure of Materials to Accused and confidentiality and Security of State” and measures to manage media coverage of trial

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# ***Stage of Revealing Information During Trial***

- **The criminal case starts with the Supply of copy of police report and other documents to the accused.**
- **It is the stage when as soon as the chargesheet is filled before the court, the magistrate/presiding Officer, is to provide the copies of all the documents presented before it, to the accused.**

# Section 230 of Bhartiya Nyay Suraksha Sanhita



**♣ Enable the accused to prepare for his defence**

**♣ Definitive aspect of Right to fair trial**

After having gone through the catena of judgments by the Hon'ble Supreme Court and High Courts around the country it can be concluded that it is the duty of the Court to supply copies of documents to the accused.

**What can be Secret informations in a case relating to terrorism ?**



- **It is a sensitive national security information that is relevant in the case.**
- **While the definitions of "classified/Secret information" varies from legal system to legal system, the term is commonly understood as Certain information requiring protection against unauthorized disclosure in the interests of national defense and security . Sensitive information that must be protected.**

# **Necessity to Manage Classified Information in terrorism cases:Why?**



◆ Protect the safety & Identity of witness

◆ Security Issue of a Nation

◆ When there is a chance that revealing of a classified information may result in another crime

◆ Some informations expressly forbidden to be disclosed.

◆ Information received in confidence from foreign government



# What is the exception to General rule of Providing Information to the Accused



- Section 193 of BNSS / (Section 173(6) of the Criminal Procedure Code)
- Section 44 of the Unlawful Activities Prevention Act (UAPA Act)
- Section 17 of National Investigation Agency Act (NIA Act)

# What can be done for Management of Classified Information

- Balance between National Security and the fundamental rights of the accused



 **How do we create this balance?**



**Approach taken by Hon'ble The  
High Courts And Hon'ble Apex  
Court**

# **Views of Hon'ble High Courts**

**♣ Dharambir vs. Central Bureau of Investigation;  
148(2008)DLT289**

**♣ Ujjal Dasgupta Vs State; Laws(DLH) 2008-4-70**

**♣ Arvind Kejriwal Vs State of NCT Delhi  
2020 AIRonline DEL 1419**

**♣ Prashant Jaiswal Vs State of UP 2023**

# Views of Hon'ble Supreme Court

♣ **P. Gopalkrishnan v. State of Kerala and ors. AIR 2020 SC 1**

♣ **CBI v. Abhishek Verma, (2009) 6 SCC 300**

♣ **Wahid-ur-Rehman Parra Vs Union Terrotory of Jammu and Kashmir 2022 SCC OnLine SC 237**

Hon'ble the Supreme Court in Supt. And Rememberancer of Legal Affairs Vs Satyen Bhowmick AIR 1981 SCC 917 has restated the Cardinal Principle- "That the accused is entitled for copy of every evidence, Which the prosecution may use against him during Trial". Still the court cannot be oblivious to the Nature of Offence and the provisions for safeguarding the safety of witnesses and National Security.

# WHAT CAN BE DONE

If the court determines that the information is relevant and disclosure necessary, the court should consider the following alternatives/options in striking an appropriate balance in protecting both parties' interests:

- (1) **redacting some or all of the classified or sensitive information** from documents before requiring their production;
- (2) substituting unclassified descriptions of the classified or sensitive information or a **summary of the entire document**;
- (3) **substituting a statement or other form of the information**, admitting the relevant facts the classified information would tend to prove.



## WHAT CAN BE DONE

(4) **Order for inspection** of record before evidence.

(5) Order for the presence of IT expert in cases electronic documents are involved.

(6) Order relating to the security and proper custody of classified/Secret/sensitive information .

Throughout this process the court must maintain an appropriate record to satisfy its legal obligations in balancing the rights of the victim , the rights of the Accused and National Security.

# MEDIA TRIAL




# MEDIA TRIAL

The problem does not lie in media's exposing the lacuna of a bad investigation by police, or mal-performance of the duties ordained to the civil servants but the eye-brows start to raise when the media ultra vires its legitimate jurisdiction and does what it must not do. Be it highlighting the sub-judice issues into public keeping at stake the sanctity of judicial procedures and 'right to life with dignity' of accused and suspects. The media trial has now moved on to media verdict and media punishment which is no doubt an illegitimate use of freedom and transgressing the prudent demarcation of legal boundaries.

# MEDIA TRIAL

The Supreme Courts in the **Harijai Singh and Anr [AIR1997SC73]**, press freedom is neither total nor infinite. In this judgement the Supreme Court has also emphasised that media discussions on ongoing investigations and cases need to stay within responsible limits to ensure that a thorough investigation and an impartial trial of are conducted.



**In M.P. Lohia v. State of West Bengal[AIR 2005 SC 790], the Supreme Court cautioned the publisher, editor and journalist of a magazine that had reported the facts of a case that was sub-judice, thus “interfering with the administration of justice.”**

**Madhyamam Broadcasting Limited Vs Union of India & Ors Civil  
Appeal No. 8129 of 2022**

**Sahara India Real Estate Corporation Ltd. and Ors. vs. Securities and Exchange Board of India and Anr.**

**This case established that the media has a right to report on court proceedings, but that police must balance the media's right to report with the rights of the accused. The court also noted that the media must be fair and accurate in their reporting.**

**Manohar Lal Sharma v Union of India**

**This case established that the right to freedom of speech and expression is important for ensuring freedom of the press. The court also noted that even a lawful encroachment on privacy must be proportional to the law's purpose.**

# **MEDIA TRIAL**

**Nilesh Navlakha Vs Union Of India . [PIL (ST) No. 92252 of 2020]**

**Hon'ble Bombay High Court had considered Public Interest Litigations (PILs) filed against the media trials being run by certain TV channels in the name of “investigative journalism” and the role that electronic media played in derogation of characters of those being investigated by police and courts**

# **MEDIA TRIAL**

**The privacy and dignity of the victim must always be respected;**

**The sensitive information related to the case should never be made public.**

**The confession/admission made in front of an investigator cannot published;**

**The interviews of anyone who is connected to the case may not be undertaken when the matter is sub-judice**


**It stated some other observations at the conclusion of the judgment such as the press must deliver news stories in their genuine and accurate form. It must include the account of the events as it was honestly recorded, without exaggeration or bias, and any form of distortion. The incidence should not be overemphasised for the sake of gaining more and more viewers.**



# **What can be done ?**

- 1. The most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct.**
- 2. Order can be passed to allow controlled media reporting of the cases**

**What should be the practise in Terrorism cases for passing an order restricting media ?**

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- *The court is obliged to evolve a mechanism to balance the rights of intra-conflict in respect of the same fundamental rights. The factum of legitimacy is a primary consideration. It has to be remembered that no fundamental right is absolute and it can have its limitations in certain circumstances. It is the obligation of the constitutional courts to weigh the balance in certain circumstances, the interest of the society as a whole, when it would promote and instill the rule of law.*

♣ Thankyou

