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A Case in "Media Overreach": Irresponsible Media Reporting and the Rights of Rehabilitated Offenders

by

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Abstract — Aruna Shanbaug's death, recently, stimulated a media report tracing the person who had been convicted for the assault on her. The extensive media coverage resulted in the loss of employment as well as residence for the convict, who had already served his sentence and had been released almost 30 years ago. The following paper focuses on this incident as part of a larger question: Is it justified for the media to engage in investigative journalism that has the inevitable consequence of depriving rehabilitated offenders of their right to life and personal liberty? The paper argues, through reliance on the Constitution of India and a host of international conventions concerning human rights, that the rehabilitated offenders are entitled to their fundamental rights to privacy and to an adequate means of livelihood. In the event of the deprivation of any of these rights, there lies a duty on the State to intervene on behalf of such convicts and restore such rights to them. Not only this, but irresponsible journalism unduly interferes with the process of reformation of offenders, in which the State as well as the society has a legitimate interest. The paper also explores the means, within the existing legal framework, through which the media could be restrained from engaging in irresponsible journalism. One of the means explored in detail is the initiation of criminal proceedings for the offence of defamation under the Indian Penal Code, 1860. The paper advocates for the introduction of a concept of "spent conviction" akin to that in vogue in United Kingdom. Lastly, the paper suggests that the guidelines issued by the Press Council of India can prove useful in preventing undue media reporting on



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rehabilitated offenders but that would require Press Council to be reasonably empowered to enforce its guidelines through appropriate sanctions.

INTRODUCTION: THE LARGER QUESTION

When Aruna Shanbaug died after a long period of silent suffering in 2015¹, the media, in a bid to provide its readers with information pertaining to this case, dug up all the legal issues that were raised out of her suffering. The reason why *Aruna Shanbaug case*² attracted widespread attention was the brutal assault she had been subjected to, and the subsequent petition for euthanasia, that triggered a lot of debate and discussion on the legal aspect of the issue. So when she died, the media went back to its archives and brought out all the records related to her case.

However, what was unusual was that the media reports also triggered a debate on whether the person, who had committed the brutal assault on Aruna, and had been convicted for that offence, should be tried for the offence of murder, now that Aruna had died. Obviously, the legal experts were unanimous in their opinion on this issue: such a trial couldn't be allowed as that would undoubtedly be a violation of the

fundamental right against double jeopardy. In India, the Constitution specifically provides that no one could be tried more than once for the same offence³.

This debate however, stimulated some investigative journalism on the part of the media which traced the convict to his present residence and occupation. His photographs were published and his take on the issue was also put forward. However, such reporting initiative also had some undesirable effects: the convict lost his job and was forced to leave the village where he had been residing⁴.

The aforesaid chain of events following the death of Aruna Shanbaug raise an important issue in respect of media investigations: the convict in this case had been released from jail in 1980⁵, after he had served his punishment for the crime. So after a period of almost 35 years, the media reporting has come to haunt him again and has actually deprived him of his



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residence and means of livelihood. So the question that arises is very pertinent: should the media be allowed to function in a way that could deprive a convicted person of his right to life and personal liberty, even after a long period of time has elapsed since the convict had been released after serving his punishment? In this paper, an attempt has been made to find an answer to this question.

PROTECTING REHABILITATED OFFENDERS: THE MANDATE IN CONSTITUTIONAL AND INTERNATIONAL HUMAN RIGHTS LAW

Before exploring the legal intricacies of an action against the kind of journalism that may deprive a convict of his means of livelihood and residence, it is important to understand whether our legal framework provides for the protection of a convicted person who has served his entire sentence and has been rehabilitated.

The answer to the aforesaid question, it will be argued below, is in the Taffirmative. There are maximum four lines of arguments that justify this stand.

The First Ground: The Right to privacy

Our Constitution guarantees the right to life and personal liberty to everyone.⁶ And such a right cannot be meaningfully exercised and realized if the privacy of an individual is not preserved. The Supreme Court of India has time and again reiterated the aforesaid and has upheld that the right to privacy is an integral element of the broader right to life and personal liberty. In 1994, the then Supreme Court Judge, Jeevan Reddy summed up the concept of the right to privacy in the following words:⁷

"The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages."



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Our Constitution also empowers the Parliament to enact laws that are in compliance

with international laws and treaties.⁸ As the right to privacy has also been heralded as a human right in several international conventions and treaties (including those to which India is a signatory), there is a strong reason and legal basis for enactment of a law that would provide protection to privacy of an individual. The Universal Declaration of Human Rights ("UDHR") recognizes the right to privacy expressly, as follows:

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*⁹

In the International Covenant on Civil and Political Rights ("ICCPR"), the same right is enshrined in the following words:¹⁰

- "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks."*

Similarly, the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms provides for the protection of the right to privacy in the following Article:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*¹¹

Similarly, the Organization of American States provides for the inviolability of the privacy of a person in the American Declaration of the Rights and Duties of Man, as follows:



*"Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."*¹²

The aforesaid goes to show that the right to privacy is now recognized as a fundamental legal norm in international law. In the case of a convict whose case is the subject matter of the present paper, his right to privacy would encompass his identification as a convict. It may be argued that the public has a legitimate interest in knowing about any convict, particularly one who has been convicted of an assault. However, this right to be informed should be so balanced against the right to privacy of the convict that it should not hamper the possibility of his rehabilitation and in this regard, there is an imminent need to curb the right to freedom of the press.

The Second Ground: Protecting the Right to life and personal liberty of a rehabilitated offender

More than the right to privacy, the most obvious implication of right to life is the right to means of livelihood and the State is responsible for ensuring that no one is unreasonably deprived of adequate means of livelihood. Again, this principle is enshrined in our Constitution, not only as a fundamental right¹³ but also as a Directive Principle of State Policy, which reads as under:

*"The State shall, in particular, direct its policy towards securing—
(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;"¹⁴*

The Supreme Court of India has unequivocally ruled that the right to an adequate means of livelihood is an integral part of the right to life:¹⁵

"The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part



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of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live."

Moreover, time and again, the same has been emphasized and reiterated as part of international human rights law.

Even a convict, when he is sentenced to imprisonment, is only deprived of his right to liberty and that too as per a just, reasonable and fair procedure established by law. Also, he is not thereby deprived of his right to adequate means of livelihood (as he is duly compensated for his prison labour.¹⁶ However, as has been observed in the case of the convict of Aruna Shanbaug assault, the media reporting caused public censure, which not only deprived the convict of his right to personal liberty but also caused his unemployment. His personal liberty was curbed in so far he was forced to leave his erstwhile residence and the fact of his induced unemployment points towards the loss of his means of livelihood. It is obvious that public censure, induced by media reporting, doesn't amount to "just, fair and reasonable procedure established by law", and therefore, there is no way in which such deprivation as pointed out above could be justified.

Third Ground: Protection from double jeopardy

Our Constitution specifically provides that no person shall be punished twice for the same offence.¹⁷ This is an important aspect of the right to life which is the hallmark of all fundamental and human rights, recognized throughout the world.¹⁸

In the case of the convict of Aruna Shanbaug assault, public censure and the subsequent deprivation of job and residence amount to "punishment" for the convict. This is because a penalty entails deprivation of liberty and the media reporting has exactly caused this through public criticism, by imposing social stigma. Moreover, since the convict has already suffered for the entire period of his punishment for the offence which he had committed, it is unfair to so "punish" him again through the imposition of social stigma.

Our Constitution also prescribes that no person shall be subjected to a penalty greater than that to which he would have been subjected at the time of his committing the offence.¹⁹ Now, subsequent to the commission



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of the offence, the convict was punished for the period that was then prescribed in the law. But deprivation of his liberty after the expiration of more than thirty years from the date when he has fully served his sentence, would amount to imposition of a penalty greater than the one prescribed in the law and one to which he could have been subjected to as per the law.

Thus, in respect of this right, the media reporting can be seen as depriving the convict of the human rights that he is entitled to by being a human being and thereafter, being an Indian citizen.

Fourth Ground: The reformatory goal of punishment

There has been a long and extensive debate on the issue of abolition of death penalty. Even the international human rights law prescribes the objective of punishment to be reformation and rehabilitation. Our Supreme Court has, time and again, reiterated that the objective of punishment is to reform and rehabilitate the offender. In one of the cases, it was observed:²⁰

"It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense."

It is significant to observe, in the present case pertaining to the assault on Aruna Shanbaug, that the convict had been released way back in 1980 when he had served his entire sentence. It had been more than thirty long years during which he was absent from the media glare. There are no reports, even in the investigative journalism of which the present study is so critical, that he had committed any other offence. This raises a presumption of his rehabilitation after his punishment. Perhaps this is a perfect case, where one could see that the triumph of law in perhaps reforming a criminal. The natural consequence should have been his assimilation into the society, and not contempt for him.

However, the media reporting has defeated the object of the law by creating unnecessary hurdles and impediment in the process of the assimilation of the convict. Though the death of Aruna Shanbaug and her endless



suffering were unfortunate, but it is also unfortunate for a civil society to deprive an offender who has served his sentence, and is attempting to mend his ways, of his right to the legitimate opportunity to be rehabilitated.

PROTECTING REHABILITATED OFFENDERS: DRAWING AN ANALOGY WITH LAW COMMISSION'S RECOMMENDATIONS ON MEDIA TRIAL

There is another justification for the argument that the State must protect the right to life and liberty of rehabilitated convicts. This justification flows from the recommendations of the Law Commission on media trial.²¹ Although it must be conceded at the very outset that the Law Commission's report is in respect of the protection of the accused, and not convicts, it can be seen that the Law Commission

did observe that during a subsequent trial, the publication of the fact of previous conviction of the suspect or accused could amount to contempt.²²

The rationale is simple: such publication is restrained because the fact of previous conviction must not be so represented to unfairly influence the Judge trying the accused. Otherwise the accused would be placed in a disadvantaged situation, and in effect his conviction at the subsequent trial would then be seen as a result of the conviction for his previous offence, which in fact, would be double jeopardy, albeit latent and indirect. Similarly, publication of whereabouts of a rehabilitated offender would subject him to public censure and deprive him of his right to life (as seen in *Aruna Shanbaug case*²³), in a way punishing him for his previously committed offence yet again. Hence, the analogy drawn here warrants the use of the Law Commission's recommendations in justifying the need for constitutional and State protection of rehabilitated offenders from media reporting exactly on the lines of the protection that is extended to an accused who had been previously convicted in a case.

RESTRAINING IRRESPONSIBLE JOURNALISM: CRIMINAL PROCEEDING FOR DEFAMATION UNDER THE PENAL CODE

Now that it is clear from the aforesaid analysis that the constitutional mandate requires protection of the life and liberty of the convicts who have rehabilitated, the next question is in respect of the legal mode in which such protection could be ensured.



One of the ways in which the State could ensure such protection is by initiating a prosecution for defamation against the media professionals/institutions that are responsible for triggering the public censure for the rehabilitated convicts. Of late, there has been a lot of controversy about the need for repealing defamation as an offence from the Indian Penal Code, 1860. However, the present case is a perfect example of a situation wherein a person may have a remedy through a criminal proceeding of defamation.

It is unreasonable to expect that a convict who has been deprived of his means of livelihood would be able to initiate a suit of defamation against the large media houses in the country. Moreover, even if we presume that such a state of affairs could somehow exist, there is no assurance of his getting justice considering the fact that the law of defamation, as a civil wrong, is not codified in India. And therefore, the outcome of such a civil suit would be highly uncertain.

In contrast, a criminal proceeding of defamation would be prosecuted by the State on behalf of the convict. Moreover, the provision dealing with criminal defamation in the Indian Penal Code²⁴ is quite comprehensive with all the exceptions and explanations laid down²⁵. Thus a criminal proceeding of defamation is more likely to deliver justice in the circumstances being talked about, as compared to a civil suit.

Moreover, the provisions for the offence of defamation in the Indian Penal Code provide for a possibility for protection of the rights of the rehabilitated convict. A perusal of the relevant part of the provision would make things clear. The relevant part of section 499 is being reproduced hereunder:

"499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases

hereinafter excepted, to defame that person.

...

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that



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the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

...

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

Firstly, the reporting by the media could very justifiably be argued to be within the contours of the offence of defamation. It may be argued further that that the convict has been deprived of his means of livelihood owing to irresponsible media reporting points to the fact that the media reporting lowered his character in the estimation of the members of the society.

Moreover, the reporting by the media in this case doesn't qualify within the exception of public good as the unnecessary reports of the present residence of the convict is not an imputation of truth that was required to be made for public good. As the convict had already been tried for his crime and had already duly served his sentence, there is no amount of public good that could have been done now. Moreover, it has been over thirty years since the convict had been released, and since there have been no imputation of another offence that he might have been alleged to have committed, there is no legitimate public interest in knowing about his present whereabouts. Also, since he was definitely not absconding in relation to any case, this reaffirms the futility of such extensive media coverage of his present whereabouts.

All the aforesaid goes to show that a proceeding for criminal defamation is highly likely to restrain media houses in their unreasonable reporting and journalistic practices. Therefore, undertaking prosecution under the provision for defamation under the Indian Penal Code is one way in which the State could protect the rights to life and liberty of rehabilitated convicts.

RESTRAINING IRRESPONSIBLE JOURNALISM: INTRODUCING THE CONCEPT OF 'SPENT CONVICTION'

In the United Kingdom there is a concept of spent convictions in vogue, in the law.²⁶ The concept implies that once a convict has served his entire sentence and a specific period of time has elapsed since his release, then his conviction would amount to be termed as "spent". A spent conviction entitles



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the convict to various benefits. For example, he/she needn't disclose the factum of such conviction, once it has been "spent":

"Effect of rehabilitation:

(1) a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—

(a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Great Britain to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and

(b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto."²⁷

Also, in a suit for defamation, a defense of truth will not be available to the defendant, if he/she has published the fact of the conviction of the plaintiff after his conviction has been 'spent'.²⁸

In this scenario, India may draw inspiration from such concepts. Usually, the concept of spent conviction in UK is not extended to all convicts, but only to those who have been "rehabilitated". The United Kingdom Act defines the concept of "rehabilitation" as follows:²⁹

"(1) where an individual has been convicted, whether before or after the commencement of this Act, of any offence or offences, and the following conditions are satisfied, that is to say—

(a) he did not have imposed on him in respect of that conviction a sentence which is excluded from rehabilitation under this Act; and

(b) he has not had imposed on him in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned



conviction in accordance with section 6 below a sentence which is excluded from rehabilitation under this Act; then, after the end of the rehabilitation period so applicable ...or, where that rehabilitation period ended before the commencement of this Act, after the commencement of this Act, that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the first-mentioned conviction and that conviction shall for those purposes be treated as spent.

(2) A person shall not become a rehabilitated person for the purposes of this Act in respect of a conviction unless he has served or otherwise undergone or complied with any sentence imposed on him in respect of that conviction;"

Thus, if the convict has been rehabilitated and has since been released and is no longer a threat to the society, then he should be entitled to the benefit of the concept of "spent conviction". The law may not provide exemption to such convict from disclosing the fact of their conviction in matters of application for employment, but it could at least ensure that the media is prohibited from intruding unnecessarily through irresponsible journalism.

IMPLEMENTING THE CONCEPT OF 'SPENT CONVICTION' IN THE INDIAN CONTEXT

In the United Kingdom, the concept of “spent conviction” aids the plaintiff-convict if he had initiated a suit for defamation. In fact, the defenses in an action for defamation would not be available to the defendant if it is established that the publication was made with malice. The relevant provision is being provided hereunder:³⁰

“Defamation actions

(1) This section applies to any action for libel or slander begun after the commencement of this Act by a rehabilitated person and founded upon the publication of any matter imputing that the plaintiff has committed or been charged with or prosecuted for or convicted of or sentenced for an offence which was the subject of a spent conviction.

...

(5) A defendant in any such action shall not by virtue of subsection (3) above be entitled to rely upon the defense of justification if the publication is proved to have been made with malice.”



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There are two difficulties that lie in the idea of India exactly enacting a similar provision in the Indian context. They are as follows:

a.) Firstly, as already argued in this paper earlier, it is unreasonable to presume that the convict will be able to file a civil suit for defamation, considering the socio-economic context of the offenders in India. Instead, the Indian legal provision should be drafted in a manner consistent with the provision for criminal defamation in the Indian Penal Code.

In light of the above, it is suggested that the proposed law should make a reference to section 499 and 500 of the Indian Penal Code. This could be in addition to a provision for a civil suit of defamation. In other words, it is suggested that the benefit of a provision similar to that which is in effect in the United Kingdom should be available in India, not only in a civil suit but also in a criminal proceeding for defamation.

b.) Secondly, it will be difficult to establish “malice” in cases of irresponsible journalism, which is the requirement in the United Kingdom Act's provision. The state of mind here is not necessarily malice but that which could be termed as recklessness. It must be accepted that media persons will not have malicious intent in defaming the convict. But their utter disregard for the ethics of journalism result in deprivation of life and liberty of the rehabilitated convict, despite their being aware of the consequences of such irresponsible journalism. This could be compared with the criminal liability for rash driving. In the offence for rash driving³¹, the offender could not be made liable for “malice” but is punished for the utter disregard for the safety of the people driving and walking nearby. Therefore, in the criminal proceeding for defamation, the state of mind should be recklessness. In such a case, if it is established that the convict's livelihood was endangered owing to reckless journalism on the part of the defendant, then the defenses of defamation would not lie against the plaintiff-convict.

DRAWING UPON THE GUIDELINES AND POWERS OF THE PRESS COUNCIL OF INDIA

It is often argued as part of jurisprudence that law is ineffective without sanctions.

If we look at traffic laws, most of the guidelines therein are bereft of any ethical element, yet offences have been defined together with punishment for better enforcement of these guidelines to ensure that the traffic is in order. This implies that there are greater chances that guidelines could be effectively enforced if they are supported by effective sanctions.

In view of the abovementioned idea, it may be argued that the rights of rehabilitated convicts in India could be duly protected if certain press



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regulation guidelines that already exist could be provided with sanctions for enforcement. For this, it needs to be assessed that what are the guidelines on media that could thus be used to protect the interest of rehabilitated convicts against irresponsible journalism.

In India, the Press Council of India is the statutory, quasi-judicial authority that acts as the watchdog of the media in the country.³² It was established in 1966 and currently functions under the mandate of the Press Council Act, 1978.³³ The Press Council is empowered under the law to lay down code of ethics to be followed by the journalists and other media professionals. The Press Council Act, 1978 reads:

"Objects and functions of the Council

(2) The Council may, in furtherance of its objects, perform the following functions, namely:

(b) to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;"³⁴

Some of these guidelines that have a bearing on the case of reporting of rehabilitated offenders, albeit indirectly, are being explored here.

The list of the Principles and Ethics issued by the Press Council accords importance to the respect for the right of privacy. The guidelines are reproduced hereunder:

"6. Right to Privacy

i) The Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the media, among others. Special caution is essential in reports likely to stigmatize women. Explanation: Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of PRIVACY excepting where any of these impinges upon the public or public interest."³⁵



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And consistent with the analysis of the right of privacy earlier in this paper, it can be argued that the relevant guidelines have significance in the context of reporting the whereabouts of rehabilitated convicts, once they have been released after completion of their sentence.

Despite the fact that the aforesaid guidelines protect the interest of rehabilitated offenders, the effect is only indirect and hence weak. And therefore perhaps, the

guidelines have failed to discourage the media professionals from undertaking irresponsible journalism. One of the reasons is also the lack of adequate powers with the Press Council to deal with such cases by itself. Although it has issued the guidelines requiring press to respect the right to privacy of individuals, it is not adequately equipped under its parent statute to strictly enforce its guidelines. The most it can do is to warn, admonish or censure the press.³⁶ However, these are inadequate means of enforcement.

In view of the aforesaid limitations of the Press Council's guidelines and the powers of the Press Council to enforce its guidelines, it is suggested that a comprehensive legal measure should be provided for to rein in the overenthusiastic but irresponsible journalism in respect of rehabilitated convicts.

One manner in which the aforesaid limitations could be remedied is by equipping the Press Council with the power to punish for violation of its guidelines akin to a power to punish for contempt, which is vested in courts of record, like the Supreme Court.³⁷ This could be justified on the basis of the fact that as a matter of convention, all the persons who have chaired the Press Council since its inception have been members of the judiciary (in particular, sitting/retired Judges of the Supreme Court of India³⁸) and therefore it could be presumed that being well versed with the content of the powers of contempt and the mode of their exercise, the chairperson, being a judicial member, would be best circumstanced to exercise like powers reasonably.

Moreover, the exercise of such powers to punish could be limited to only pre-specified situations of violation of Press Council's guidelines. And one such guideline could be made to pertain to the protection of the rehabilitated offenders. Therefore, in effect, first of all, specific guidelines should be introduced prohibiting journalism that impinges on the right to privacy of rehabilitated offenders, and then powers should be conferred upon the Press Council to effectively enforce such guidelines. In the alternative, to do away with the concerns of creating an all-too powerful Press Council, the Parliament could enact specific laws with specified penalties in respect of the irresponsible journalism that defames the rehabilitated offenders.



CONCLUSION

Of late, "media trial", as a term, has been associated with media publishing reports about a suspect or an accused before his trial has ended. However, as this paper demonstrates, irresponsible media reporting could adversely affect a person even after he has served his sentence, long time after his trial has already ended. The paper analyses the adverse effects in terms of the deprivation of the fundamental rights of a convict, who has perhaps rehabilitated.

From the analysis above, it can be concluded that there is an urgent need to restrain the media in its unusual zeal to provide information about such convicts. This conclusion is reinforced in view of the fact that today, media reports have a far greater influence than they had in the past-the advent of social media-Facebook, Twitter, Google-has made proliferation of information easier and faster, coupled with the fact that the information, once put into motion, cannot be withheld over internet later.

It must be realized that the freedom of speech and expression, enshrined as a fundamental right in our Constitution, is not an absolute right and it must be restrained in favour of the right to privacy of others-in this case, a rehabilitated offender. This standard is required to be enforced considering the fact that a failure in

the process of rehabilitation could result in disruption of public order (public order is a ground on which freedom of speech and expression can be reasonably restricted). This is obviously in addition to the law's concern to prevent defamation of the rehabilitated convict.

Press Council's guidelines, although worded in general terms, in respect of protection of the right to privacy, could be used to protect the rehabilitated offenders, by supplementing them with adequate penalties that could be used to restrain media. Alternatively, specific provisions could be made for the protection of rehabilitated convicts, and media reporting depriving them of their right to life and liberty could be penalized (this may require enactment of a special legislation on the lines of the law that has been enacted in the United Kingdom and described in this paper).

Rehabilitation of offenders is a subtle process, which fulfils the reformatory goal of punishment. Therefore, the State has a legitimate interest in ensuring that rehabilitation of offenders is not unduly interfered with, as rehabilitation goes a long way in reforming, not only the convict, but also the society as a whole. Moreover, the State is constitutionally bound to protect a convict's right to livelihood once he has served his sentence. Therefore, "media overreach" must be curtailed to the extent that it unduly interferes with the State's obligations.

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¹ Tabassum Barnagarwala, 'Between life and death for 42 long years, Aruna Shanbaug passes away' *The Indian Express* (Lucknow, 19 May 2015) 1.

² *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454.

³ Constitution of India, art 20(2).

⁴ Peter Ronald Desouza, 'The incomplete case of *Aruna Shanbaug*' *The Hindu* (Delhi, 10 June 2015) <<http://www.thehindu.com/opinion/lead/the-incomplete-case-of-aruna-shanbaug/article7298902.ece>> accessed 14 June 2015.

⁵ 'U.P.: Panchayat to decide whether Aruna Shanbaug's assailant Sohanlal Valmiki can stay in Parpa village' (IBNLIVE, 1 June 2015) <<http://www.ibnlive.com/news/india/up-panchayat-to-decide-whether-aruna-shanbaugs-assailant-sohanlal-valmiki-can-stay-in-parpa-village-999683.html>> accessed 14 June 2015.

⁶ Constitution of India, art 21.

⁷ *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632, 649.

⁸ Constitution of India, art 253.

⁹ Universal Declaration of Human Rights 1948, art 12 (Universal Declaration of Human Rights) <<http://www.un.org/en/documents/udhr/index.shtml#a12>> accessed 13 June, 2015.

¹⁰ International Covenant on Civil and Political Rights 1966, art 17 (International Covenant on Civil and Political Rights) <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 13 June, 2015.

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms 1950, art 8 (Convention for the Protection of Human Rights and Fundamental) <<http://conventions.coe.int/Treaty/en/Treaties/html/005.htm>> accessed 13 June, 2015.

¹² OAS Declaration of the Rights and Duties of Man, art 5 <http://www.hrcr.org/docs/OAS_Declaration/oasrights3.html> accessed 13 June, 2015.

¹³ Constitution of India, art 21.

¹⁴ Constitution of India, art 39(a).

¹⁵ *Olga Tellis v. Bombay Municipal Corpn*, (1985) 3 SCC 545, 571.

¹⁶ *Mohd. Giasuddin v. State of A.P.*, (1977) 3 SCC 287, 295-96.

¹⁷ Constitution of India, art 20(2).

¹⁸ International Covenant on Civil and Political Rights 1966, art 14(7) <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 13 June, 2015.

¹⁹ Constitution of India, art 20(1).

²⁰ *Mohd. Giasuddin v. State of A.P.*, (1977) 3 SCC 287, 290.

²¹ Law Commission, 200th Report on Trial by Media: *Free Speech v. Fair Trial Under Criminal Procedure* (Amendments to the Contempt of Court Act, 1971) (Law Com No. 17, 2006).

²² *ibid.* 195-201.

²³ *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454.

²⁴ Indian Penal Code 1860, chap XXI.

²⁵ Indian Penal Code 1860, s 499.

²⁶ Rehabilitation of Offenders Act, 1974 (United Kingdom) <<http://www.legislation.gov.uk/ukpga/1974/53>> accessed 13 June, 2015.

²⁷ Rehabilitation of Offenders Act, 1974 (United Kingdom), s 4. <<http://www.legislation.gov.uk/ukpga/1974/53>> accessed 13 June, 2015.

²⁸ Rehabilitation of Offenders Act, 1974 (United Kingdom), s 8 <<http://www.legislation.gov.uk/ukpga/1974/53>> accessed 13 June, 2015.

²⁹ Rehabilitation of Offenders Act, 1974 (United Kingdom), s 1 <<http://www.legislation.gov.uk/ukpga/1974/53>> accessed 13 June, 2015.

³⁰ Rehabilitation of Offenders Act, 1974 (United Kingdom), s 8 <<http://www.legislation.gov.uk/ukpga/1974/53>> accessed 13 June, 2015.

³¹ Indian Penal Code 1860, s 279.

³² 'Press Council of India, Introduction (Press Council of India) <http://www.presscouncil.nic.in/Content/1_1_Introduction.aspx> accessed on 13 June, 2015.

³³ *Ibid.*

³⁴ Press Council Act, 1978, s 13(2)(b).

³⁵ Norms of Journalistic Conduct, r 6 (Press Council of India) <http://www.presscouncil.nic.in/Content/62_1_PrinciplesEthics.aspx> accessed 14 June, 2015.

³⁶ Press Council Act, 1978, s 14(1).

³⁷ Constitution of India, art 129.

³⁸ 'Resume Press Council of India'(Press Council of India) <http://www.presscouncil.nic.in/Content/3_1_ResumePCI.aspx> accessed on 14 June, 2015.

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