Role of Media in Contemporary Society
&
Impact of Media Reporting on Administration of Justice

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1. **Right to speech and expression a fundamental right / human right:** Right to speech and expression is not only a fundamental right of the citizens under Article 19(1)(a) of the Constitution of India but is also a human right. As is well known, like any other fundamental right guaranteed by the Constitution under Part III of it, the right as to speech and expression is also not absolute but is always subject to just and reasonable restrictions. Right to freedom of expression is a most cherished and valuable right forming basis of democratic society. Media is an instrument of free expression. Right to freedom of expression / publication by media, however, is not absolute and subject to reasonable restriction under Article 19(2) of the Constitution so as to ensure orderly conduct of democratic society. See: Sahara India Real Estate Corporation Limited Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench).

2. **Free press is one of the important pillars on which foundation of rule of law and democracy rests :** The reach of the media, in the present times of 24-hour channels, is to almost every nook and corner of the world. Further, large number of people believe as correct that which appears in media, print or electronic. Thus, the power and reach of the media, both print as well as electronic is tremendous. It has to be exercised in the interest of the public good. A free press is one of the very important pillars on which the foundation of the rule of law and democracy rests. At the same time, it is also necessary that freedom must be exercised with utmost responsibility. It must not be abused. It should not be treated as a licence to denigrate other institutions. Sensationalism is not unknown. Any attempt to make news out of nothing just for the sake of sensationalism has to be deprecated. When there is a temptation to sensationalise, particularly at the expense of those institutions or persons who from the nature of their office cannot reply, such temptation has to be resisted, and if not, it would be the task of the law to give clear guidance as to what is and what is not permitted. For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected. While the media can, in the public interest, resort to reasonable criticism of a judicial act or the judgement of a court for public good or report any such statements, it should refrain from casting scurrilous aspersions on, or impute improper motives or personal bias to the judge. Nor should they scandalise the court

or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge. The judgements of courts are public documents and can be commented upon, analysed and criticised, but it has to be in dignified manner without attributing motives. It should be kept in mind that judges do not defend their decisions in public and if citizens disrespect the person s laying down the law, they cannot be expected to respect the law laid down by them. The only way the judge can defend a decision is by the reasoning in the decision itself and it is certainly open to being criticised by anyone who thinks that it is erroneous. Before placing before public, whether on print or electronic media, all concerned have to see whether any such criticism has crossed the limits as aforesaid and if it has, then resist every temptation to make it public. See : Rajendra Sail Vs. M.P. High Court Bar Association & Others, (2005) 6 SCC 109 .

3. **Freedom of Press & Press Council Act, 1978**: The commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far- fetched. It should have a proximate and direct nexus with the expression. The expression of thought that is impugned should be intrinsically dangerous to the public interest. The expression of thought should be like the equivalent of a "spark in a power keg." In order for the State to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. See: Ajay Goswami Vs. Union of India & Others, (2007) 1 SCC 143.

4(A). Freedom of Press not higher than right of citizens under Article 19(1)(a) of the Constitution : Right of the Press in India is no higher than the right of the citizens under Article 19(1)(a) of the Constitution and is traced to the same provisions. The ability of truth to be recognized by a discerning public in the supposedly free market place of ideas forms much of the basis for the grant of the unquestionable freedom to the Press including the Media Houses. If freedom is enjoyed by the Press without a deep sense of responsibility, it can weaken democracy. In some sections, there appears to be a disturbing trend of bias. Controlling business interests and political allegiances appear to erode the duty of dispassionate and impartial purveying of information. **See: Yashwant Sinha and others Vs. Central Bureau of Investigation Through its Director and another, AIR 2019 SC 1802 (Three - Judge Bench)**

4(B). Fundamental right of speech and expression of citizenry and media compared : Media enjoys no special immunity or elevated status compare to the citizens and is subject to the general laws of the land including those relating to taxation. However, in post-independent India, both the citizen and the citizen-owned media enjoy a constitutional guarantee under Article 19(1)(a) that was hitherto absent. The freedom of the journalist is an

ordinary part of the freedom of the subject and to whatever lengths the subject in general may go, so also may the journalist, but, apart from the statute law, which privilege is no other and no higher. No privilege is attached to a journalist's position. A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression and, therefore, cannot claim, as his fundamental right, the benefit of the liberty of the Press. No privilege higher than the ordinary citizen attaches to the Press nor it is distinct from the freedom of the ordinary citizen. See :

(i) Sahara India Real Estate Corporation Limited Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench)(paragraphs 21, 22 & 23)

(ii) M.S.M. Sharma Vs. Krishna Sinha, AIR 1959 SC 395

5. **Supremacy of rule of law** : 'Rule of law' is the basic rule of governance of any civilised policy. The scheme of the Constitution of India is based upon the concept of rule of law. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of low unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. The only weapons of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. See :

(i) Vinay Chandra Mishra, In re, AIR 1995 SC 2348.

(ii) Arundhati Roy, In re, (2002) 3 SCC 343

6. **Trial by media : What is ? :** The expression "trial by media" is defined to mean**:** "The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny." See : R.K. Anand Vs. Registrar, Delhi High Court, (2009) 8 SCC 106 (Three-Judge Bench) (para 292).

7. **Fair criticism of judicial acts permissible**: In the free marketplace of ideas, criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act or the conduct of a judge, the institution of the judiciary and its functioning as contrary to law or public

good, no court would treat criticism as a contempt of court. Undoubtedly, judgments are open to criticism. No criticism of a judgement, however vigorous, can amount to contempt of court, provided it is kept within the limits of reasonable courtesy and good faith. Fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts. However, if the criticism is likely to interfere with due administration of justice or undermine the confidence which the public reposes in the courts of law as courts of justice, the criticism would cease to be fair and reasonable criticism but would scandalise courts and substantially interfere with administration of justice. Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the judges or the courts in relation to judicial matters. No system of justice can tolerate such unbridled licence. A distinction must be made between a mere libel or defamation of a judge and what amounts to a contempt of the court. The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that it will be punishable as contempt. Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. It will be injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. See: Rajendra Sail Vs. M.P. High Court Bar Association & Others, (2005) 6 SCC 109.

8(A). **Extent of power of media to report about sub-judice matters :** This, is however, not to say that media is free to publish any kind of report concerning a sub-judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment. See : R.K. Anand Vs. Registrar, Delhi High Court, (2009) 8 SCC 106 (Three-Judge Bench) (para 291)

8(B). **Interview of victim of sexual offence by Media prohibited by the Supreme Court :** This Case pertains to sexual abuse and alleged rape of minor girls in shelter home in Bihar. These victims were interviewed and visited many times by investigating authorities, officials belonging to National Commission of Women and State Commission for Women and several journalists. Victim of sexual abuse or sexual offence should not be

required to re-live trauma of horrifying incident. In present case, multiple visits, questioning and interrogation had been made. These minor victims cannot be compelled to re-live trauma again and again. Hence, electronic media was restrained by the Supreme Court from telecasting or broadcasting images of victims even in morphed or blurred form. Media prohibited from interviewing victims keeping welfare of victims in mind. Broadcasting news regarding incident, interest of victims has to be kept in mind by media. Interview of such children was prohibited for all except authorised person of National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR) in consultation with and in presence of a trained counsellor or mental health expert. See : Sampurna Behura Vs. Union of India, (2018) 9 SCC 555.

9. **Freedom of Press and Contempt of Courts Act, 1971**: Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. However, the maintenance of dignity of courts is one of the cardinal principles of rule of law in a democratic set-u- and any criticism of the judicial institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the courts cannot be permitted when found to have crossed the limits and has to be punished. See :
   (i) Arundhati Roy, In re, (2002) 3 SCC 343
   (ii) Harijai Singh, In re, (1996) 6 SCC 466.

10. **Right to dignity as human right**: Human rights are not conferred by any ruler, constitution or statute. A human being is born with human rights. Giving new dimensions to Article 21 of the Constitution, the Supreme Court, in the cases noted below, has declared that right to live as guaranteed under Article 21 is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. The right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. Anything which impedes the right to lead life with dignity and decency is violative of human rights. Life without dignity is like a sound i.e. not heard. Dignity speaks, it has its sound, it is natural and human. It is a combination of thought and feeling and it deserves respect even when the person is dead and described as a 'body'. Quality of life ensures dignity of living and dignity is but a process in realizing the sanctity of life. The quality of life depends upon the life in our years. Adding to the length of life must bear a functional nexus with the quality of life. Human sufferings must have significance not only in terms of how long we live but also in terms of how well we live. The right to live

with dignity also includes the smoothing of the process of dying in case of a terminally-ill patient or a person in PVS with no hope of recovery. See **:**

(i) Common Cause Vs. Union of India, (2018) 5 SCC 1
(ii) Francis Coralie Mullin Vs Union Territory of Delhi, 1981 SC 746
(iii) Maneka Gandhi Vs Union of India, AIR 1978 SC 597.
(iv) Sunil Batra Vs Delhi Administration, AIR 1978 SC 1675
(v) Peoples Union for Democratic Rights Vs Union of India, AIR 1982 SC 1473

11. **Dignity of life as defined under the Protection of Human Rights Act, 1993:** Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines the words "Human Rights" thus : *"Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India*."

12. **Reputation of a person fundamental right under Article 21 :** Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfied him to bequeath it as a part of inheritance on posterity. It is nobility in itself for which a conscientious man would never barter it with all the tea of china or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deservers to be equally preserved by the downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passes of time. The memory of nobility no one would like to lose. None would conceive of it being atrophied. It is dear to life and on some occasions, it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity. When a court deals with a matter that has something likely to affect a person's reputation, the normative principles of law are to be cautiously and carefully adhered to. The advertence has to be sans emotion and sans populist perception, and absolutely in accord with the doctrine of audi alteram partem before anything adverse is said. See : Om Prakash Chautala Vs. Kanwar Bhan & Others, (2014) 5 SCC 417 (para 1).

13. **Right of accused to be treated innocent** : Presumption of innocence is a human right. Every accused is presumed to be innocent unless proved guilty. Presumption of innocence of accused starts in the trial court and continues even upto the appellate stage. See--

(i) Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra 2011 (72) ACC 699 (SC).
(ii) Jayabalan Vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC)
(iii) Shabnam Vs. Union of India, (2015) 6 SCC 702.
(iv). Kailash Gour Vs. State of Assam, (2012) 2 SCC 34(Three-Judge Bench)

(v). Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (Three–Judge Bench)
(vi). Narendra Singh Vs. State of M.P., (2004) 10 SCC 699.
(vii) B.K. Kapur Vs. State of T.N., (2001) 7 SCC 231 (Five-Judge Bench) *(para 40 .*

14. **Right of accused to be treated innocent before being held guilty is a human right as declared by UNO:** The Universal declaration of human rights made by the United Nations on December 10, 1948 recognises the right of an accused to be treated innocent as his human right. **Article 11** declares : "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

15. Right to privacy as fundamental right : Right to life and personal liberty includes right to privacy as an integral part guaranteed by Article 21 under Part III of the Constitution of India. A large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period. What one eats is one's personal affairs and it is a part of his right to privacy which is included in Article 21 of our Constitution. To be vegetarian or non-vegetarian is one's personal affair and part of his right of privacy. The right to privacy is implicit in the right to life and liberty guaranteed by Article 21 of the Constitution. It is a "right to be left alone". See :

(i) Justice K.S. Puttaswamy (Retd.) Vs. Union of India & Others, AIR 2017 SC 4161 (Nine-Judge Bench)
(ii) Bhavesh Jayanti Lakhani vs. State of Maharashtra, (2009) 9 SCC 551.
(iii) Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat & Others, AIR 2008 SC 1892 (para 26), (ii) R. Rajagopal Vs. State of Tamil Nadu, AIR 1995 SC 264 (para 28).

16. Fair & speedy trial as fundamental right of an under trial under Article 21 of the Constitution : Speedy trial of the cases of under trial prisoners has also been declared by the Supreme Court as their fundamental right under Article 21 of the Constitution. See :

(i) Babubhai Bhimabhai Bokhiria Vs. State of Gujarat, (2013) 9 SCC 500
(ii) Vakil Prasad Singh vs. State of Bihar, (2009) 3 SCC 355
(iii) A.R. Antulay vs. R.S. Nayak, AIR 1992 SC 1701 (Seven-Judge Constitution Bench)
(iv) Kadra Pehadiya vs. State of Bihar, AIR 1981 SC 939
(v) Hussainara Khatoon vs. State of Bihar, AIR 1976 SC 1360

17. **Restrictions against publication of court proceedings by media :** Extent of powers of media to publish proceedings of Courts: Publicity of proceedings of courts is not an absolute rule. A number of statutes restricts, empower or require the court to restrict admission to certain court proceedings and the publication of such proceedings. In this context, following enactments can be seen:

(i) **The Indian Divorce Act, 1869** which pertains to matrimonial cases between persons professing the Christian faith, provides that the whole or any part of the proceedings under the Act may be heard behind closed doors in certain circumstances.

(ii) Section 33 of the **Special Marriage Act, 1954** provides that proceedings under the Act shall be conducted in camera, if either party desires or if the district court so thinks fit to direct.

(iii) Section 43 of the **Parsi Marriage and Divorce Act, 1936** provides that a suit preferred under the Act shall be tried within closed doors should either of the parties so desire.

(iv) Section 22 of the **Hindu Marriage Act, 1955** provides that a proceeding under the Act shall be conducted in camera if either party so desires or if the court thinks fit, and prohibits the printing or publication of any matter relating to such a proceedings without the previous permission of the Court.

(v) Section 14 of the **official Secrets Act, 1923** empowers the court to exclude the public form proceedings under the Act by an order made on the ground that the publication of any evidence given or any statement to be made in the course of the proceedings would be prejudicial to the safety of the State.

(vi) Section 4 of the **Contempt of Courts Act, 1971** which permits the publication of reports of judicial proceedings is subject to Section 7 of the same Act the effect of which is to prohibit a publication of a proceeding sitting in chambers or in camera, where it is contrary to any enactment, prohibited on grounds of public policy or in 'exercise of powers vested in it' or of information relating to proceedings held in chambers or in camera for reasons connected with the security of the State or public order or relating to secret process, discovery or invention which is an issue in the proceedings.

(vii) Section 30 of the erstwhile **Prevention of Terrorism Act, 2002** (POTA) permitted the holding of proceedings in camera where the life of the witness was in danger.

(viii). **Section 228-A of the IPC** providing for publication of the name of victim of sexual offence.

(ix). Even apart from these statutory exceptions, publicity of proceedings can be restricted in the interests of justice. In Naresh Shridhar Mirajkar Vs. State of Maharashtra, AIR 1967 SC 1, the Supreme Court has held that the Court has the inherent power under Section 151 of the Civil Procedure Code to order a trial to be held in camera but this power must be exercised with great caution and only where the court is satisfied beyond doubt that the ends of justice would be defeated if the case were to be tried in open court. But if the requirement of justice

itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court. In this connection, it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice, it is a means, not an end. It is the fair administration of justice which is the end of judicial process and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice. That is the rational basis on which the conflict of this kind must be harmoniously resolved. See :

(i) Sahara India Real Estate Corporation Limited & Others Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench)(paras 31 & 32)

(ii) Naresh Shridhar Mirajkar Vs. State of Maharashtra, AIR 1967 SC 1

18. **Penalty for publication of name/identity of victim of sexual offences under Sections 376, 376-A, 376-B, 376-C, 376-D & 228-A IPC:** S. 228-A IPC reads thus : "Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence u/s 376, Sec. 376-A, Sec. 376-B. Sec. 376-C, or Sec. 376-D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. " See:

(i) State of Orissa VS. Sukru Gouda, AIR 2009 SC 1019
(ii) Premiya Vs. State of Rajasthan, 2008 (63) ACC 94 (SC)
(iii) Om Prakash Vs. State of U.P., 2006 (55) ACC 556 (SC)
(iv) State of Karnataka Vs. Puttaraja, (2004)) 1 SCC 475
(v) State of H.P. Vs. Shree Kant Shekari, (2004) 8 SCC 153
(vi) Bhupinder Sharma VS. State of H.P., (2003) 8 SCC 551

19. **Contents in electronic records as evidence:** Section 3 of the Evidence Act (as amended vide the Information Technology (Amendment) Act, 2008) (Central Act No. 10 of 2009): The expressions, Certifying Authority, electronic signature, Electronic Signature Certificate, electronic form, electronic records, information, secure electronic record, secure electronic signature and subscriber shall have the meanings respectively assigned to them in the Information Technology Act, 2000.

Section 17: Admission defined: An admission is a statement, (Oral or documentary or contained in electronic form), which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Section 22-A: When oral admission as to contents of electronic records are relevant: Oral admissions as to the contents of electronic records are

not relevant, unless the genuineness of the electronic record produced is in question.

Section 34: Entries in books of accounts including those maintained in an electronic form, when relevant: (Entries in books of accounts including those maintained in an electronic form), regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Section 35: Relevancy of entry in public record or an electronic record made in performance of duty: An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

Section 39: What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

Section 45-A: Opinion of Examiner of Electronic Evidence

Section 47-A: Opinion as to electronic signature which relevant

Section 59: Proof of facts by oral evidence

Section 65-A: Special provisions as to evidence relating to electronic record

Section 65-B: Admissibility of electronic records

Section 67-A: Proof as to electronic signature

Section 73-A: Proof as to verification of digital signature

Section 81-A: Presumption as to Gazettes in electronic forms

Section 85-A: Presumption as to electronic agreements

Section 85-B: Presumption as to electronic records and electronic signatures

Section 85-C: Presumption as to Electronic Signature Certificates

Section 88 : Presumption as to telegraphic messages

Section 88-A : Presumption as to electronic messages

Section 90-A : Presumption as to electronic records five years old

Section 131: Production of documents or electronic records which another person, having possession, could refuse to produce.

20. **Media personnel recording statement of accused or witness into electronic device can be examined as witness by prosecution or defence in court** : If the Investigating Officer had declined to record statements of (Prosecution) witnesses, accused can cite them as defence witnesses and can request the court to summon them u/s 311 CrPC. Accused can apply for issue of any process u/s 233 CrPC during defence evidence and also for production of any document for its proof u/s 233 CrPC by compelling the appearance of the defence witness. See :

(i) Jogendra Nahak Vs. State of Orissa, 1999 (39) ACC 458 (SC) (Three-Judge Bench)

(ii) Ram Bahadur Shahi Vs. State of U.P., 1988 ALJ 451 (Allahabad).

21. **Media personnel can be summoned by court u/s 91 CrPC to produce his camera/CD/electronic device recording statement etc. of witnesses and accused :** During the course of enquiry or trial, media personnel can be summoned by court u/s 91 CrPC to produce his camera/CD/electronic device recording statement etc. of witnesses and accused.

22. Extra-judicial confession (Section 24, Evidence Act) : An extra-judicial confession made by an accused can be relied upon and conviction on the basis thereof can be recorded by the court only when the following conditions are proved:

(i) The witness proving the extra-judicial confession must state in his testimony regarding the exact words used by the accused or in the words as nearly as possible in making the extra-judicial confession to such witness.

(ii) Prosecution should prove the motive, occasion or reason for making extra-judicial confession by the accused.

(iii) It should be proved as to why the accused reposed his confidence in the witness proving the extra-judicial confession and the connection or relation of the witness with the accused making extra-judicial confession.

(iv) In case of non-judicial retracted confession it has to be seriously considered as to why the accused reposed confidence in the witness.

(v) The testimony of the witness deposing about confession should be credible.

(vi) The circumstances under which the extra-judicial confession was made by the accused.

(vii) It must be proved by prosecution that the extra-judicial confession was made voluntarily. See:

(i) Podyami Sukada Vs. State of M.P, AIR 2010 SC 2977
(ii) State of A.P. Vs. Shaik Mazhar, AIR 2001 SC 2427
(iii) C.K. Reveendran Vs. State of Kerala, AIR 2000 SC 369
(iv) Ram Khilari Vs. State of Rajasthan, AIR 1999 SC 1002
(v) Tarseem Kumar Vs. Delhi Administration, 1994 SCC (Cri) 1735
(vi) Kishore Chand Vs. State of H.P., AIR 1990 SC 2140
(vii) Heramba Brahma Vs. State of Assam, AIR 1982 SC 1595

23. Statement of witness u/s 161 CrPC not substantive piece of evidence: The statement of a witness made during investigation u/s 161 CrPC is not a substantive piece of evidence but can be used primarily for the following limited purposes :

(i) to contradict such witness by the accused u/s 145, Evidence Act.

(ii) to contradict such witness also by the prosecution but with the leave of court.

(iii) to re-examine the witness, if necessary. See : V.K. Mishra Vs. State of Uttarakhand, (2015) 9 SCC 588 (Three-Judge Bench).

24. Improvement made by witness in its statement made to the Court than what was made to the I.O. u/s 161 CrPC not to be relied on : Improvement made by witness in its statement made to the Court than what was made to the I.O. u/s 161 CrPC not to be relied on. See **:**

(i) Rambraksh Vs. State of Chhatisgarh, AIR 2016 SC 2381.

(ii) Tomaso Bruno Vs. State of Uttar Pradesh, (2015) 7 SCC 178 (Three-Judge Bench) .

25. Statement of witnesses u/s 164 CrPC to be recorded by audio-video electronic means: It is necessary that the statements of eye witnesses are got recorded during investigation itself u/s 164 of the CrPC. In view of the amendments in Section 164 CrPC in 2009 w.e.f. 31.12.2009, such statement of witnesses should be got recorded by audio-video electronic means. The eye-witnesses must be examined by the prosecution as soon as possible. Statements of eye-witnesses should invariably be recorded u/s 164 CrPC as per the procedure prescribed thereunder. See : Judgment dated 28.11.2017 of the Supreme Court in Criminal Appeal Nos. 2045-2046 of 2017, Doongar Singh & Others Vs. State of Rajasthan (paras 12 & 13).

26. Section 164(1) CrPC as amended w.e.f. 31.12.2009 : A new Proviso substituted to sub-section (1) of Section 164 CrPC w.e.f. 31.12.2009 reads thus : "Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in presence of the advocate of the person accused of an offence : Provided further that no confession shall be recorded by a police offier on whom any power of a Magistrate has been conferred under any law for the time being in force.**"**

27. Improvements by witnesses beyond their statements u/s 161/164 CrPC or u/s 32 Evidence Act : "If the PWs had failed to mention in their statements u/s 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. See :

1. Rohtash Vs. State of Haryana, (2012) 6 SCC 589
2. Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra, 2011 (72) ACC 699 (SC).
3. Rudrappa Ramappa Jainpur Vs. State of Karnataka, (2004) 7 SCC 422
4. Vimal Suresh Kamble Vs. Chaluverapinake, (2003) 3 SCC 175

Note: In the case of State of U.P. Vs. Satish, 2005(51) ACC 941 (SC), it has been held by Supreme Court that in the case of late recording of statement u/s 161 CrPC, if the investigating officer has been able to give a plausible explanation for delay, no adverse inference is to be drawn.

28. Improvements or variations made by witnesses (u/s 32 Evidence Act as they had survived) in their earlier and later statement alone is not sufficient ground to reject their otherwise reliable testimony. See : Maqsoodan Vs. State of U.P., (1983) 1 SCC 218 (Three-Judge Bench)

29. If a relevant fact is not mentioned in the statement of the witness recorded u/s 161 CrPC but the same has been stated by the witness before the court as P.W., then that would not be a ground for rejecting the evidence of the P.W. if his evidence is otherwise credit worthy and acceptable. Omission on the part of the police officer would not take away nature and character of the evidence. See : Alamgir Vs. State of NCT, Delhi, (2003) 1 SCC 21.

30. **Statement u/s 164 CrPC not to be used as substantive evidence :** Statement recorded u/s 164 CrPC cannot be used as substantive evidence. It can be used only to corroborate or contradict the witness in accordance with the provisions u/s 145 and 157 Evidence Act. See :

1. Nabi Ahmad Vs. State of U.P., 1999 (2) Crimes 272 (All—D.B.)
2. Utpal Das Vs. State of WB, AIR 2010 SC 1894
3. Baijnath Singh Vs. State of Bihar, 2010(70)ACC 11(SC)

31. **Prejudicial publicity of court proceedings amounts to interference with the administration of justice:** Excessive prejudicial publicity leading to usurpation of functions of the court not only interferes with the administration of justice which is sought to be protected under Article 19(2) of the Constitution but it also prejudices or interferes with a particular legal proceedings. In such case, Courts are duty-bound under inherent jurisdiction, subject to certain parameters, to protect the presumption of innocence which is now recognised by this Court as a human right under Article 21 of the Constitution subject to the applicant's proving displacement of such a presumption in appropriate proceedings. See: Sahara India Real Estate Corporation Limited & Others Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench)(paras 31 & 32)

32. "Compact Disc" is a 'document' in Evidence Act and admissible in evidence as per Section 294(1) CrPC without endorsement of admission or denial by the parties : Definition of 'document' in Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the Court to obtain admission or denial on a document under sub-section (1) to Section 294, CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the Counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the Counsel for the complainant

in respect of document filed by the defence. See : State of UP Vs. Ajay Kumar Sharma, 2016 (92) ACC 981 (SC)*(para 14)*.

33. **CCTV footage admissible in evidence u/s 65-B, Evidence Act :** In the case noted below, the electronic record i.e. CCTV footage and photographs revealed the presence of the injured informant and victim near the mall from where they had boarded the bus. The CCTV footage near the hotel where the victims were dumped showed moving of white coloured bus having green and yellow stripes and the word "Yadav" written on it. The bus exactly matched the discription of the offending bus given by the injured informant and the victim. Evidence of the Computer Cell Expert revealed no tampering or editing of the CCTV footage. The Supreme Court found the CCTV footage to be craditworthy and acceptable u/s 65-B of the Evidence Act. See : Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)

34. **'Face Book' as a public forum facilitates expression of public opinion :** Face Book is a public forum and it facilitates expression of public opinion. Posting of one's grievances against machinary even on govt. face book page does not buy itself amount to criminal conduct. A citizen has right to expression under Article 19(1)(a) & (2) of the Constitution of India. See : Manik Taneja Vs. State of Karnataka, (2015) 7 SCC 423.

35. **Information contained in computers:** The printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Such secondary evidence is admissible u/s 63 and 65 of the Evidence Act. See : State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715---- (known as Parliament attack case).

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

36. **Admissibility and Evidentiary Value of Tape recorded conversation (Section 7, Evidence Act):** With the introduction of Information Technology Act, 2000 “electronic records” have also been included as documentary evidence u/s 3 of the Evidence Act and the contents of electronic records, if proved, are also admissible in evidence. Tape recorded conversation is admissible in evidence provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a

relevant conversation is a relevant fact and is admissible u/s 7 of the Evidence Act. It is also comparable to a photograph of a relevant incident. See : R.M. Malkani Vs. State of Maharashtra, AIR 1973 SC 157.

37. Preconditions for admissibility of tape recorded conversation: A tape recorded statement is admissible in evidence, subject to the following conditions :

(1) The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

(2) The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.

(3) Possibility of tampering with, or erasure of any part of, the tape recorded statement must be totally excluded.

(4) The tape recorded statement must be relevant.

(5) The recorded cassette must be sealed and must be kept in safe or official custody.

(6) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances. See :

(i) Ram Singh & others Vs. Col. Ram Singh, 1985 (Suppl) SCC 611

(ii) State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715---- (known as Parliament attack case)

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

38. Secondary evidence of electronic records inadmissible unless requirements of Section 65-B are satisfied : Proof of electronic record is a special provision introduced under the Evidence Act. The very caption of sSection 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the pro-cedure prescribed under Section 65B of the Evidence Act. That is a complete Code in itself. Being a special law, the general law on secondary evidence under Section 63 and 65 has to yield. An electronic record by way of secondary ervidence therefore shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which the secondary evidence pertaining to that electronic record, is inadmissible. See :

(i) Anvar P.V. Vs. P.K. Basheer & Others, AIR 2015 SC 180 (Three-Judge Bench)

(ii) Harpal Singh Vs. State of Punjab, (2017) 1 SCC 734

Note : *Decision in State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 now overruled by a Three-Judge Bench of the Hon'ble Supreme Court vide Anvar P.V. Vs. P.K. Basheer, AIR 2015 SC 180 (Three-Judge Bench).*

39. Certificate u/s 65-B required only for secondary tape recorded conversation and not for primary : Where original tape-recorded conversation of randsom calls was handed over to police, it has been held by a Three-Judge Bench of the Supreme Court that since the original tape-record was primary evidence, therefore, certificate u/s 65-B of the Evidence Act was not required for its admissibility. Such certificate u/s 65-B is mandatory only for secondary evidence and not for the primary evidence i.e. the original tape-recorded conversation. See : Vikram Singh Vs. State of Punjab, (2017) 8 SCC 518 (Three-Judge Bench)

40. Conversation on telephone or mobile & its evidentiary value : Call records of (cellular) telephones are admissible in evidence u/s 7 of the Evidence Act. There is no specific bar against the admissibility of the call records of telephones or mobiles. Examining expert to prove the calls on telephone or mobile is not necessary. Secondary evidence of such calls can be led u/s 63 & 65 of the Evidence Act. The provisions contained under the Telegraph Act, 1885 and the Telegraph Rules, 1951 do not come in the way of accepting as evidence the call records of telephone or mobile. See : State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715---- (known as Parliament attack case).

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

41. Alleged translated version of voice cannot be relied on without producing its source : Interpreting Sections 65-A & 65-B of the Evidence Act, it has been held by the Hon'ble Supreme Court that where the voice recorded was inaudible and the voice recorder was not subjected to analysis, the translated version of the voice cannot be relied on without producing the source and there is no authenticity for translation. Source and it authenticity are the two key factors for an electronic evidence. See :

(i) Harpal Singh Vs. State of Punjab, (2017) 1 SCC 734 (on electronic evidence in the nature of call details)

(ii) Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123

42. Section 66A of the Information Technology Act, 2000 struck down by the Supreme Court in its entirety being violative of Article 19(1)(a) of the Constitution : Section 66A of the Information Technology Act, 2000 is

intended to punish any person who uses the internet to disseminate any information that falls within the sub-clauses of Section 66A. It will be immediately noticed that the recipient of the written word that is sent by the person who is accused of the offence is not of any importance so far as this Section is concerned. (Save and except where under sub-clause (c) the addressee or recipient is deceived or misled about the origin of a particular message.) It is clear, therefore, that the information that is disseminated may be to one individual or several individuals. The Section makes no distinction between mass dissemination and dissemination to one person. If the Section does not require that such message should have a clear tendency to disrupt public order. Such message need not have any potential which could disturb the community at large. The nexus between the message and action that may be taken based on the message is conspicuously absent - there is no ingredient in this offence of inciting anybody to do anything which a reasonable man would then say would have the tendency of being an immediate threat to public safety or tranquillity. On all these counts, it is clear that the Section has no proximate relationship to public order whatsoever. Under Section 66A, the offence is complete by sending a message for the purpose of causing annoyance, either 'persistently' or otherwise without in any manner impacting public order. Viewed at either by the standpoint of the clear and present danger test or the tendency to create public disorder, Section 66A would not pass muster as it has no element of any tendency to create public disorder which ought to be an essential ingredient of the offence which it creates. Equally, Section 66A has no proximate connection with incitement to commit an offence. Firstly, the information disseminated over the internet need not be information which 'incites' anybody at all. Written words may be sent that may be purely in the realm of 'discussion' or 'advocacy' of a 'particular point of view'. Further, the mere causing of annoyance, inconvenience, danger etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all. They may be ingredients of certain offences under the Penal Code but are not offences in themselves. For these reasons, Section 66A has nothing to do with 'incitement to an offence'. As Section 66A severely curtails information that may be sent on the internet based on whether it is grossly offensive, annoying, inconvenient, etc. and being unrelated to any of the eight subject-matters under Article 19(2) must, therefore, fall foul of Article 19(1)(a), and not being saved under Article 19(2), is declared as unconstitutional. Section 66A cannot possibly be said to create an offence which falls within the expression 'decency' or 'morality' in that what may be grossly offensive or annoying under the Section need not be obscene at all - in fact the word 'obscene' is conspicuous by its absence in Section 66A. If one looks at Section 294 of the Penal Code, the annoyance that is spoken of is clearly defined - that is, it has to be caused by obscene utterances or acts. Equally, under Section 510, the annoyance that is caused to a person must only be by another person who is in a state of intoxication and who annoys such person only in a public place or in a place for which it is a trespass for him to enter. Such narrowly and closely defined contours of offences made out under the Penal Code are conspicuous by their absence in Section 66A

which in stark contrast uses completely open ended, undefined and vague language. Incidentally, none of the expressions used in Section 66A are defined. Even 'criminal intimidation' is not defined - and the definition clause of the Information Technology Act, Section 2 does not say that words and expressions that are defined in the Penal Code will apply to this Act. Hence, S. 66A is unconstitutionally vague. Applying the tests of reasonable restriction, it is clear that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right. Information that may be grossly offensive or which causes annoyance or inconvenience are undefined terms which take into the net a very large amount of protected and innocent speech. A person may discuss or even advocate by means of writing disseminated over the internet information that may be a view or point of view pertaining to governmental, literary, scientific or other matters which may be unpalatable to certain sections of society. It is obvious that an expression of a view on any matter may cause annoyance, inconvenience or may be grossly offensive to some. In point of fact, Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total. Thus S. 66A is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth. See : Shreya Singhal Vs. Union of India, AIR 2015 SC 1523.

43. **Newspaper reports only as hearsay evidence :** Newspaper reports would be regarded as only hearsay evidence and cannot be relied upon due to bar of Section 60 of the Evidence Act. See :

(i) Joseph M. Puthussery Vs. T.S. John, AIR 2011 SC 906.
(ii) Laxmi Raj Shetty Vs. State of T.N., AIR 1988 SC 1274.
(iii) Quamarul Ismam Vs. S.K. Kanta 1994 Supp. (3) SCC 5.

44. **Object of order of court postponing publication of court proceedings is to ensure fair trial:** The postponement order is a neutralising device evolved by the courts to balance the interests of equal weightage viz. freedom of expression vis-a-vis freedom of trial in the context of the law of contempt. Such orders of postponement, in the absence of any other alternative measures such as change of venue or postponement of trial, satisfy the requirement of justification under Article 19(2) of the Constitution and they also help the courts to balance the conflicting societal interests of right to know vis-a-vis another societal interest in fair administration of justice. See : Sahara India Real Estate Corporation Limited & Others Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench)(paras 31 & 32)

45. **Postponement of publication of court proceeding not to be forever but for limited period:** The question is whether such "postponement orders" constitute restriction under Article 19(1)(a) of the Constitution and whether such restriction is saved under Article 19(2). At the outset, we must understand the nature of such orders of postponement. Publicity postponement orders should be seen in the context of Article 19(1)(a) of the Constitution not being an absolute right. The US clash model based on collision between freedom of expression (including free press) and the right to a fair trial will not apply to the Indian Constitution. In certain cases, even the accused seeks publicity (not in the pejorative sense) as openness and transparency is the basis of a fair trial in which all the stakeholders who are a party to a litigation including the Judges are under scrutiny and at the same time people get to know what is going on inside the courtrooms. These aspects come within the scope of Article 19(1) and Article 21 of the Constitution. When rights of equal weight clash, the Courts have to evolve balancing techniques or measures based on recalibration under which both the rights are given equal space in the constitutional scheme and this is what the ""postponement order" does, subject to the parameters mentioned hereinafter. But, what happens when the courts are required to balance important public interests placed side by side. For example, in cases where presumption of open justice has to be balanced with presumption of innocence, which as stated above, is now recognised as a human right. These presumptions existed at the time when the Constitution was framed [existing law under Article 19(2)] and they continue till date not only as part of rule of law under Article 14 but also as a fundamental right under Article 21. The constitutional protection in Article 21 which protects the rights of the person for a fair trial is, in law, a valid restriction operating on the right to free speech under Article 19(1)(a), by virtue of force of it being a constitutional provision. Given that the postponement orders curtail the freedom of expression of third parties, such orders have to be passed only in cases in which there is real and substantial risk of prejudice to fairness of the trial or to the proper administration of justice which in the words of Justice Cardozo is "the end and purpose of all laws". However, such orders of postponement should be ordered for a limited duration and without disturbing the content of the publication. See: Sahara India Real Estate Corporation Limited & Others Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench)(paras 31 & 32)

46. **No straight jacket formula can be made for restrictions against publication of court proceedings:** What constitutes an offending publication would depend on the decision of the court on case-to-case basis. Hence, guidelines on reporting cannot be framed across the Board. The shadow of "law of contempt" hands over our jurisprudence. The phrase "in relation to contempt of court" under Article 19(2) of the Constitution does not in the least describe the true nature of the offence which consists in interfering with the administration of justice in impending and perverting the course of justice. See: Sahara India Real Estate Corporation Limited & Others Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench)(paras 31 & 32).

47. **Right to approach the High Court/Supreme Court for restriction against publication of court proceedings:** In the light of the law enunciated hereinabove, anyone, be he an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/her rights under Article 21 of the Constitution to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court and seek an order of postponement of the offending publication/broadcast or postponement of reporting of certain phases of the trial (including identity of the victim or the witness or the complainant), and the court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Such neutralising device (balancing test) would not be an unreasonable restriction and on the contrary would fall within the proper constitutional framework. See: Sahara India Real Estate Corporation Limited & Others Vs. SEBI, (2012) 10 SCC 603 (Five-Judge Bench)(paras 31 & 32).

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