

Freedom Of Speech & Expression Of Press Vis-À-Vis Contempt Of Court Law : A Concise Overview

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Introduction

Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression. Free Speech is live wire of the democracy. Freedom of expression is integral to the expansion and fulfillment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. Iver Jennings said, "Without freedom of speech, the appeal to reason which is the basis of democracy cannot be made".² Milton in his *Aeropagitica* says that without this freedom there can be no health in the moral and intellectual life of either the individual or the nation.³

Reasonable Grounds for Restraining Media in Order to Keep Administration of Justice Unimpaired

The freedom of speech under article 19(1) (a) of the Constitution of India has to be carefully and cautioned used, so as to avoid interference of justice and leading to undesirable results in the matters *sub-judice* before the courts. The impact of television and newspaper coverage on judiciary's reputation by creating a widespread of guilt, regardless of any verdict in a court of law will not be fair.⁴

It is essential for the maintenance of dignity of courts and is one of the cardinal principles of rule of law in a free democratic country that the criticism or even the reporting particularly in *sub-judice* matters must be put to check and balances so as to not to interfere with the administration of justice.⁵

This Court made it clear that this Court is concerned with the question as to whether guidelines for the media be laid down? If so, whether they should be self-regulatory? Or

whether this Court should restate the law or declare the law under Article 141 on balancing of Article 19(1) (a) rights vis-à-vis Article 21, the scope of Article 19(2) in the context of the law regulating contempt of court and the scope of Article 129 r/w Article 215.

In *Reliance Petrochemicals Ltd. v. Proprietors of Indian News Express, Bombay Pvt. Ltd.*⁶ there was a publication in one the national dailies of certain articles which contained adverse comments on the proposed issue of debentures by a public limited company. The validity of the debentures was *sub-judice* in the Supreme Court of India. The court had granted injunction against the press, restraining publications of the articles on the legality of the debenture issue. The restriction of the press was based on reasonable grounds for keeping the administration of justice unimpaired and it was held that such reasonable grounds must apprehend a danger that is a real and imminent. The doctrine of "clear and present danger" was propounded by Justice Holmes in *Schenck v. United States*⁷.

Necessity for Formulation of Guidelines

In case of, *Sahara India Real Estate v. Securities Exchange Board of India*⁸ the Supreme Court said that;

"We are distress to note that even "without prejudice" proposals sent by the learned counsel for the appellants to the learned counsel of SEBI has come on one of TV channels are increasing by the day. Such reporting not only affects the business sentiments but also interferes in the administrations of justice."

The continental approach of the matters relating to sub-judice is less concerned with the issue of fair trail than with the need for safeguarding privacy, personal dignity and

presumption of innocence of trial participants. The underlying assumption of this model is that the media coverage of pending trials might be at odds not only with the fairness and impartiality of the proceedings, but also with other individual and societal interests.⁹

In the pending proceedings before the court as a result it is not lonely infringing the rights of the petitioner to fair trial, its act is also amounting to contempt of court, which is neither good for the public at large due to obstruction and interference in the administration of justice nor for the petitioner because his reputation has reputation has been maligned before the public and his right to fair trial is also infringed. It is important to note that in the common law approach the protection of sanctity of legal proceedings.

To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court/High Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate courts.

Judicial Censorship and Stoppage from Contempt Of Court

in the view of the judgment of this Court in *A.K. Gopalan v. Noordeen*¹⁰, such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or accused under Article 21 from the time when the criminal proceedings in a subordinate court are imminent or where suspect is arrested, this Court has held in *Ram Autar Shukla v. Arvind Shukla*¹¹ that the law of contempt is a way to prevent the due process of law from getting perverted.

Whilst there is no fetter on the fair reporting of any matter in court, matters relating to proposal made inter-parties are privileged from public disclosure. That, disclosure and publication of

pleadings and other documents on the record of the case by the third parties can only take place on an application to the court and pursuant to the directions given by the court.

“it is well settled that it is inappropriate for comments to be made publicly (in the Media or otherwise) on cases (civil and criminal) which are sub judice; this principle has been stated in Section 3 of the Contempt of Courts Act, which defines criminal contempt of court as the doing of an act whatsoever which prejudices or interferes or tends to interfere with the due course of any judicial proceeding or tends to interfere or obstruct or tends to interfere or obstruct the administration of justice”.

For trials and public confidence in the courts as the proper forum for settlement of disputes as part of the administration of justice, under the common law, were given greater weight than the goals served by unrestrained freedom by press. As a consequence, the exercise of free speech respecting ongoing court proceedings stood limited.

Contemplation of Contempt of Court Act 1981

The meaning of words “contempt of court” in art. 129 and 215 is wider than the definition of criminal contempt in section 2(c) of the contempt of court acts, 1971. The contempt of court is special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice. In the context of second part of art. 129 and art. 215 of the constitution of India, the object of the contempt of law is only to punish, it includes the power of the courts to prevent such acts which interfere, impede or prevent administration of justice. Therefore, this court had opined direction as to the manner and extent of publicity which can be given to the pleadings/ documents filed in the court by one or the other party in a pleading proceedings which have not yet adjudicated upon. In doing so this court had restate the law or

declare the law or declare the law under art, 141 on balancing of article 19(1)(a) rights vis-à-vis article 21, the scope of article 19(2) in the context of the law regulating contempt of court and the scope article 129 r/w 215 of the Constitution of India.

Section 2 of the 1981 Act, strict liability has been incorporated (except in Section 6 whose scope has led to conflicting decisions on the question of intention). The basis of the strict liability contempt under the 1981 Act is the publication of “prejudicial” material. The definition of publication is also very wide. It is true that the 1981 Act has restricted the strict liability contempt to a fewer circumstances as compared to cases falling under common law. However, contempt is an offence sui generis. At this stage, it is important to note that the strict liability rule is the rule of law whereby a conduct or an act may be treated as contempt of court if it tends to interfere with the course of justice in particular legal proceedings, regardless of intent to do so. Sometimes, fair and accurate reporting of the trial (say a murder trial) would nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trials. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trials. Thus, postponement order not only safeguards fairness of the later or connected trials, it prevents possible contempt.

Restraining Media to Publish does not Violates Freedom of Speech and Press

In *Brij Bhushan v. State of Delhi*¹², this Court was called upon to balance exercise of freedom of expression and pre-censorship. This Court declared the statutory provision as unconstitutional inasmuch as the restrictions imposed by it were outside Article 19(2), as it then stood. However, this Court did not say that pre-censorship per se is unconstitutional.

The principle of open justice is not absolute. There can be exceptions in the interest of administration of justice. In the case of *Naresh Shridhar Mirajkar v. State of Maharashtra*¹³, the High Court ordered that the deposition of the defence witness should not be reported in the newspapers. This order of the High Court was challenged in this Court under Article 32. This Court held that apart from Section 151 of the Code of Civil Procedure, the High Court had the inherent power to restrain the press from reporting where administration of justice so demanded. This Court held vide para 30 that evidence of the witness need not receive excessive publicity as fear of such publicity may prevent the witness from speaking the truth. That, such orders prohibiting publication for a temporary period during the course of trial are permissible under the inherent powers of the court whenever the court is satisfied that interest of justice so requires. As to whether such a temporary prohibition of publication of court proceedings in the media under the inherent powers of the court can be said to offend Article 19(1) (a) rights, which includes freedom of the press to make such publication, this Court held that an order of a court passed to protect the interest of justice and the administration of justice could not be treated as violative of Article 19(1) (a)¹⁴. The judgment of this Court in *Mirajkar* is delivered by a Bench of 9-Judges and is binding on this Court. Even in US, the said principle of open justice yields to the said necessities of administration of justice¹⁵. The entire law has been reiterated once again in the judgment of this Court in *Mohr. Shahabuddin v. State of Bihar*¹⁶, affirming judgment of this Court in *Mirajkar*'s case.

It has been further stated that this Court has observed in the case of *State of Maharashtra v. Rajendra J. Gandhi*¹⁷ that: “A trial by press, electronic media or public agitation is the very antithesis of rule of law”

In Sahara Case even laid down the remedial roadmap or right to approach the apex court or the Hon'ble High Court in such a significant case.

If in a given case the appropriate Court finds infringement of such presumption by excessive prejudicial publicity by the newspapers (in general), then under inherent powers, the Courts of Record *suomotu* or on being approached or on report being filed before it by subordinate court can under its inherent powers under Article 129 or Article 215 pass orders of postponement of publication for a limited period if the applicant is able to demonstrate substantial risk of prejudice to the pending trial and provided he is able to displace the presumption of open Justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication.¹⁸

Publicising Statements by Media Trades Standard Risk & Scandalises the Court

The local media, unmindful of the damage which causes to the judicial institution, merrily rode the administration of Justice. The restraint order by the courts in the *sub-judice* matters, however does not prevent or hinder any public debate on the matter academic or otherwise and not only that this act per se is a real substantial risk but also scandalises the court and is a ranking to interference in the administration of Justice.

In the case of *Swatanter Kumar vs The Indian Express Ltd. &Ors.*¹⁹ where the plaintiff who was a former Judge of this Hon'ble Court had prayed for permanent injunction against the defendant(s) and other its associates, sister concerns, its agents, representatives, correspondents, officers, employees and/or any other person, entity, in print or electronic media or via internet or otherwise from publishing, republishing, carrying out any further reports or articles such as "Another intern alleges sexual harassment by another SC Judge" or any other

matter telecasts or repeat telecasts or programs, or debates or any discussion or reporting of any kind, directly or indirectly, pertaining to the purported complaint. The court in this case found the defendant to be false after inquiry, then who would ultimately compensate and return the repute and sufferings of the plaintiff and mental torture caused to him and his family members and Your lordship emphatically stated:

Prima facie, I find that such degree of prejudice exists in the cases of persons who are seen with the eyes of public confidence and public faith like judges of the Supreme Court or the other superior Courts of justice. The said confidence reinforces the faith in the minds of the public about the fairness and credibility attached the institution of the justice. If some allegations are casted against any member of the Judiciary of the Apex Court current or retired relating to his service in his office as a judge of the Apex Court, the publicity relating to the same has to be handled with care and caution as the excessive adverse publicity relating to the said instance may not merely because a damage to the person himself (as it jeopardizes his repute which he has earned for several years as serving officer of the institute) and put question mark on the integrity of the person, but it also could damage the public good due to the reason that the confidence of the public reposed in higher judiciary much less the Apex body as a last hope for getting justice is seriously prejudiced. The said loss of faith in turn results in bad repute for the person and the institution of justice as a whole. Thus, the degree of prejudice in such case not merely creates an adverse public opinion but also casts doubts on the institution as a whole. The person who is accused of such allegations is seen with extreme suspicion and the same also creates a kind of pressure of adverse public opinion which may affect his likelihood of getting fair trial or may lead to interference in the course of the justice.

Conclusion

Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audio-visual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. It is a right to express and self-realization. Two big democracies of world i.e. America and India have remarkably protected this right. As far as India is concerned, this important right is mentioned in Article 19(1) (a), which falls in fundamental right category. Indian courts have always placed a broad interpretation on the value and content of Article 19(1) (a), making it subjective only to the restrictions permissible under Article 19(2).

- 16 Mohd. Shahabuddin v. State of Bihar, (2010) 4 SCC 653
- 17 State of Maharashtra v. Rajendra J. Gandhi,(1997) 8 SCC 386
- 18 Supra note 7.
- 19 Swatanter Kumar vs The Indian Express Ltd. &Ors., (2014) 1 HCC (Del) 572

(Endnotes)

- 1 BBA-LLB (2015-2020) 3rd Year; Delhi Metropolitan Education (DME) affiliated to GGSIP University
- 2 Jennings, W.I., Cabinet Government, 13. [Cited in Dr.Madhabhusi Sridhar, The Law of Expression, An Analytical Commentary on Law for Media 18 (Asia Law House, Hyderabad, 18, (2007)].
- 3 Johan Milton, Aeropagitica and Other Tracts, 27 (1644).
- 4 Mathrubhumi Printing & Publishing Co. Ltd. v. P. Ranjan &Anr. ILR 2005 (3) Kerala 626.
- 5 Ram Singh &Ors. v. State of NCT, Delhi.
- 6 Reliance Petrochemicals Ltd. v. Proprietors of Indian News Express, Bombay Pvt. Ltd.,AIR 1989 SC 190
- 7 Schenck v. United States, 249 U.S. 47 (1919)
- 8 Sahara India Real Estate v. Securities Exchange Board of India, (2010) 10 SCC 603
- 9 Article 21, Constitution of India, P.M. Bakshi, Universal Law Publication Pvt. Ltd., New Delhi, 2010 ISBN: 978-81-7534-840-0
- 10 A.K. Gopalan v. Noordeen,(1969) 2 SCC 734
- 11 Ram Autar Shukla v. Arvind Shukla1995 Supp (2) SCC 130
- 12 Brij Bhushan v. State of Delhi,AIR 1950 SC 129
- 13 Naresh Shridhar Mirajkar v. State of Maharashtra,AIR 1967 SC 1
- 14 see para 12
- 15 Globe Newspaper Co. v. Superior Court, 457 US 596