

MEDIA TRIAL: ROLE OF MEDIA UNDER INDIAN CONSTITUTION

Prof. Jay Bhongale*

ABSTRACT: *“The media’s the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that’s power. Because they control the minds of the masses.” Malcolm X. This quotation speaks itself the gravity and concrete nature of media in democratic set-up of any nation. Present article will focus on current operational interference of media in administration of justice, the role of Supreme Court and its power under constitution. The unavailability of mindset of legislature to insert the effective statute and negation of Supreme Court to impose guidelines on Media Trials, uncertainty of implementing of Law Commission Guidelines, the outcome of such approach and failure to tie jaws of uncontrolled media by government and Court which harming rule of law in India.*

Keywords: Accountability of Media, Contempt of Court, freedom of expression, interference of media, prejudicial publicity, Postponement,

INTRODUCTION

Media plays a vital role in moulding and influencing the opinion of the people of society and it also capable of changing the whole viewpoint through which perceive various events. The freedom of media is the freedom of people and therefore article 19(1) guaranteed to the citizens of India, because constitutional framers were aware about that a free and healthy press is indispensable to the functioning of democracy. It is the right of the citizens of India that they should kept aware about the current political, social, economic and cultural life as well as burning topics and important issues in order to enable them to consider forming broad opinion in which they are being managed, tackled and administered by the government and their functionaries.

However with the immense growth of electronic media and extensive use of social media by billions of people’s across the world, the scene is otherwise. Media has become super power and is controlling almost everyone including god. The interference in administration of justice the sole domain of judiciary is matter of severe concern for justice loving people and incidents of interference of Media increasing by the day in administration of justice. Such reporting not only affects business sentiments but also interferes in the administration of justice.¹ A trial by press, electronic media or public agitation is the very antithesis of rule of law. In this case court discuss following points;

* Assistant professor BVDU New Law College, Pune.

¹ *Sahara India Real Estate Corp. Ltd & ors. Vs. SEBI* decided by Supreme Court on September 11, 2012.

- Whether Supreme Court is concerned with question as to whether guidelines for the media be laid down? If so they should be regulatory? or whether this court should restate the law or declare the law under Article 141 on balancing of Article 19(1)(a) right vis-a-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/Article 215 of the constitution of India.
- In US Constitution, freedom of the press is expressly protected as an absolute right, any interference with the media freedom to access, report and comment upon ongoing trials is prima facie unlawful. But American courts have evolve procedural devices to neutralizing the effect of prejudicial publicity like change of venue, ordering re-trial, reversal of conviction on appeal.
- Protecting justice is the English approach. In the light of which the English Contempt of Courts Act, 1981 stood enacted, a balance is sought to be achieved between fair trial rights and free media rights vide section 4(2). Under this section courts are expressly empowered to postpone publication of any report of the proceeding or any part of the proceedings for such period as the court thinks fit for avoiding a substantial risk of prejudice to the administration of justice. Strict liability rule have been incorporated which state that it is a rule of law whereby a conduct or an act may be treated as contempt of court if it tends to interfere with course of justice in particular legal proceedings, regardless intent to do so.
- Freedom of expression is one of the most cherished values of Indian democratic society. Freedom of expression which includes freedom of the press has a capacious content. It includes the right to receive information and ideas of all kinds from different sources. In essence, the freedom of expression embodies the right to know. Underlying our Constitutional system are number of important values which must be qualified and balanced against other important and often competing values. Therefore free speech has to correlate with fair trial.
- Pre-censorship per se is not unconstitutional because already restriction laid down in Article 19 (2).
- Provision imposing pre-censorship but without providing any time limit or right to represent against pre-censorship was struck down unconstitutional. ²
- Court can grant injunction against the press restraining publication of article on the issues which may prejudice the court proceedings, but preventive injection against must be based on reasonable grounds for keeping the administration of justice unimpaired.
- The courts have the power to conduct court proceeding in camera under its inherent power and also to incidentally prohibit publication of the court proceedings or evidence of the cases outside the court by media.³ Right to open justice is not absolute, it can be restricted by the court in its inherent jurisdiction if the necessities of administration of justice so demand.

² *Virendra v. State of Punjab* AIR 1957 SC 896

³ *Naresh Shridhar Mirajkar v. State of Maharashtra* AIR 1967 SC 1

- Apart from section 151 of the code of civil procedure, the high courts have the inherent power to prohibit publication for a temporary period and that power has been provided under Article 129 and Article 215.
- All courts have inherent powers and can issue prior restraint orders or proceedings and such power do not violate Article 19 (1) (a).
- Law of the contempt is only one of the ways in which administration of justice is protected, preserved and furthered. Article 19 (2) common law of contempt as an existing law. Article 19 (2) read with Article 129 and 215 of Constitution, which include the power to punish contempt of itself.
- If we read Article 19 (2) which refers to law in relation to Contempt of Court with the first part of Article 129 and Art. 215, it becomes clear that the power is conferred on the High Court and Supreme Court to see that “the administration of justice is not perverted, prejudiced, obstructed or interfered with”.
- The meaning of the words “contempt of Court” in Art. 129 and 215 is wider than the definition of “criminal contempt” in section 2(c) of the 1971 Act with object not only to punish, it includes the power of Courts to prevent such acts which interfere, impede or pervert administration of justice.
- **Doctrine of neutralizing device** evolved by the courts to balance interests of equal weightage, viz., freedom of expression vis-a-vis freedom of trial in the context of the law of contempt.
- **Presumption of innocence** is held to be human right. If courts find that due to excessive prejudicial publicity if there is violation of this human right by the newspaper then the courts under its inherent power may postpone such publication.
- **“Doctrine of postponement”** of publication or publicity evolved by the Supreme Court of India, but such orders of postponement are only to balance conflicting public interest or rights in Part III of Constitution. Such publication (actual or and not planned publication) must create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Before passing postponement orders, courts should look at the content of the offending publication (as alleged) and its effect. Such postponement orders operate on actual publication. Such orders direct postponement of the publication for a limited period.
- The **Doctrine of ‘Postponement’** is not a punitive measure, but a preventive measure. Postponement orders must be integrally connected to the outcome of the proceedings including guilt or innocence of the accused, which would depend on the facts of each case.
- **Right to approach the High Court /Supreme Court :**
Anyone be he an accused or aggrieved person, who genuinely apprehends on the basis of the content of the publication, his/ her right under Article 21 to a fair trial would be infringed, would entitled to approach under Article 32 and Article 226 seek an order of postponement of the offending publication.

- Article 19(1) (a), Article 19 (2), Article 21, Article 129 and Article 215 may considered “law of contempt” insofar as interference with administration of Justice.
- SC court states that, it is not possible to enumerate categories of publication amounting to contempt as the court has to examine the content and context on case to case basis.

GUIDELINES PROVIDED 200TH LAW COMMISSION REPORT IN INDIA:

In one side supreme court refused to enumerate categories of publication which are prejudice to administration of justice, on the other Law commission report enumerate the list of publication which shall be banned for the welfare of the rule of law. These are following -

1. Publication concerning the character of accused or previous conclusions
2. Publication of confession
3. Publication which comment or reflect upon the merit of the case
4. Photographs
5. Police activities
6. Imputation of innocence
7. Creating an atmosphere of prejudice
8. Criticism of witnesses
9. Premature publication of evidence
10. Publication of interviews with witnesses.

Law commission provided these categories of publication shall be prohibited for the proper administration of justice. Law commission provided justification for these categories with various landmark judicial precedents from UK and US. NSW Law commission in its discussion paper in 2000 enumerate a long list of publication which may prejudicial to suspect or accused.

- (i) A photograph of the accused where identity is likely to be an issue, as in criminal cases;
- (ii) Suggestions that accused had previous convictions, or have been charged for committing an offence and/or previously acquitted, or has been involved in other criminal activity;
- (iii) Suggestions that the accused has confessed to committing the crime in question;
- (iv) Suggestions that the accused is guilty or involved in the crime for which he or she is charged or that the Jury should convict or acquit the accused; and
- (v) Comments which engender sympathy or antipathy for the accused and/or which disparage the prosecution or which make favourable or unfavourable references to the character or credibility of the accused or a witness.

RECOMMENDATIONS GIVEN BY LAW COMMISSION OF INDIA:

1. Wider definition of 'publication' word used in section 2(c) of the Contempt of Courts Act, 1971, is necessary to define 'publication' as including publication and electronic media, radio broadcast and cable television and the world-wide web insertion of explanation.

2. The word 'pending' used in Section 3(1), (2) and explanation clauses (a) (b) at different places must be substituted by the word 'active' because the word 'pending' gives an impression that a criminal case must be actually pending, and the 'active' word must be applicable not only for purposes of Section 3 but for the purposes of the entire Act.

3. Under Section 3 (2) of the Contempt of Court Act, such publications would be contempt only if a charge sheet had been filed in a criminal case. The Commission has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case.

4. It was suggested to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast.

5. Law Commission proposed section 14B under which any breach of a postponement order i.e. where the media makes a publication in breach of the postponement order, it will amount to contempt of court for which the High Court may take action according to law for criminal contempt. High Court allotted power to take action under Article 215 of the Constitution of India.

6. Law Commission proposed that Media persons shall be trained in certain aspect of law to create awareness that the media is not absolute and aspects of Constitutional law, human rights, protection of life and liberty, law relating to defamation and Contempt of Court are also important from the media point of view. Therefore various aspects of law shall be including in the syllabus of Journalism.

7. The 17th Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

SUMMARY:

- From the above discussion and examining various judgements, laws and law commission reports, it is clear perception that in India, absence of clear and absolute law which may restrict the media to interfere in the administration of justice.
- Supreme Court recently delivers the judgement on 'media trial' issue but hesitate to enumerate categories of publication which considered severe prejudice in the justice delivery process. On other side Law Commission enumerates the categories but that categories may ineffective due to lack support of any substantial law.

- The doctrine of Postponement will not effective in local level because only Supreme Court and High Court can issue to postpone the publication. But in District and Taluka level Court not authorised to issue and therefore ‘media trial’ arousing on such domestic level would be impossible to curtail.
- Justification given in relation with ‘No guidelines to regulate media reporting’ by Supreme Court in *Sahara India Real Estate Corp. Ltd & ors. Vs. SEBI*, Justice Kapadia said, “Finding an acceptable constitutional balance between free press and administration of justice is a difficult task in every legal system,” which again create dilemma and negative impact for future Indian legal system.
- It is very impossible to impose the doctrine of ‘postponement’ on reporting like social media. Because these social site may not be easy to controlled by the government and agencies. Fear factor and awareness may be helpful only to reduce such social media reporting.
- Supreme court wisely sent boll on the government court, Supreme court tried to make balance between free speech and administration of justice, court says that court cannot provide guideline because government agencies i.e. Press Council authorised to pass guidelines.
- The above analysis reveals us the gravity of the situation as it persists in India. An ideal proposal will be that the Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process.

CONCLUSION:

Media in today modern world crossing the line between freedom of expression and freedom, liberty of individual life plus affecting the administration of justice especially criminal justice and may crossing the line between investigations and publishing an opinion. To understand the role of media in democratic nation like India is more important and more incumbent now a days. To make awareness in the thinking of normal public man is prime task with conscious effort of this present topic.

There should have more concrete and absolute limitation on interference of media through sound and effective legislation and this awareness shall be properly understand not only by legislature of India but also higher judiciary who are restricted to themselves to laid down guidelines to media.

Through the media, practices has been started to create pressure on the lawyers even-do not take up the case accused, this type of forcing accused to go to trial without any defense is the violation of Principles of Natural Justice. Hence this topic shall be more discussed in constitutionally and socially to know the real face of Media today.

These are following may be the solution in India for demarcating the line and principles for controlling media trial,

- There shall Nature and scope of freedom of press in the light of working of social and electronic media
- there is need of comprehensive guidelines/law to regulate functioning of media
- Establishment of media tribunal
- Restructuring of Press Council of India
- Regulation for sting operation
- Media accountability and media ethics and self regulation by media
- Implementation of 200th Law Commission Report.

*Bijoyananda v. Bala Kush*⁴ observed that, “The responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of the press should not degenerate into a licence to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons.”

REFERENCE

1. Madhavi Goradia Diwan, 2006, '*Facets of Media Law*', Eastern Book Company, 1-340
2. 'Ranjon Mang, *Media in Modern India*', Deep & Deep Publications Pvt. Ltd.
3. '*Forbidden Zones: Law and the Media*', Paul Sebastian; Law Publishers (India) Pvt. Ltd.
4. '*Press, Media & Telecommunication Laws*', Professional Book Publication.
5. Zehra Khan, '*Trial by Media: Derailing Judicial Process in India*' Nalsar Hyderabad 1MLR 2010.
6. S. Devesh Tripathi, '*Trial by Media: Prejudicing the sub-judice*' ,
7. Law Commission of India 200th Report, on Media Trial in 2006.

⁴ AIR 1953 Orissa 249