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Media Trial in India: A Case of Double Jeopardy

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Introduction

The following texts deal with the freedom press in a balance with civic responsibilities and restriction. The text first analyses the Right to free speech and freedom of press as a guarantee under the constitution. Further a study is done on the impact of judges as well as accused on the use of such media. The impact on the trial and various stages of trial.

The later part talks about the striking balance created by the constitution on the the freedom and the restrictions it offers. Further, an analysis of the 200th Law commission Report on the Trial by Media with reference to the criminal administration of justice is drawn.

Freedom to Press and Media an Essential Tenet

The prime purpose of free press guarantee is regarded as creating fourth institution outside the government as additional checks on the three branches namely executive legislative and judiciary.¹ In India freedom of press is implied under freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India.² The Supreme Court has laid down emphasis in several cases on the importance of maintaining freedom of press in a democratic society. The press seeks to advance the public interest by publishing the facts and opinions without which a democratic electorate make responsible judgements. Articles and news are published in the press from time to time to expose the weakness of government.

The freedom of press is an essential guarantee in the constitution since it was framed. The importance of freedom of press in parliamentary democracy was recognised stated and restated and confirmed by superior courts despite the fact that Article 19(1)(a) does not contain any specific enumeration of this freedom. As and when called upon to do so, the courts have annulled the legislative instruments and which seeks to impinge the freedom of press, because it was realised that this freedom is absolutely imperative for the system.

In the United States of America, the First Amendment specially protects a free press. The view developed by the United States Supreme Court is that includes more than merely serving a “neutral conduit of information between the people and their elected leaders or a neutral form of debate”. The democratic credentials of a state are judged today by the extent of freedom of press enjoys in that state. DOUGLAS. J, of the U.S. Supreme Court has observed that “acceptance of government of a dissident press is measure of majority of that nation”³Suppression of freedom of press to praise or criticise government agents and to clamour and contend for or against change violates the first amendment by restraining one of

¹New York Times Company v. United States, 403 U.S., 713(1971).

²M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1026(7th Edition, 2016).

³Terimineillo v. Chicago, 337, U.S. 1.

the very agencies the framers of the American constitution choose to improve the American society by keeping it free.⁴

The prevalence of an independent judiciary as well as a free press are both essential in a constitutional democracy. In recent years, the advent of cable television, local radio networks and the internet has greatly enhanced the reach and impact of the mass media. Unlike Western nations, the circulation of newspapers and magazines has also been continuously growing in India on account of rapidly increasing literacy levels. This continuously expanding readership and viewership has given our media organisations an unprecedented role in shaping popular opinions and preferences. Undoubtedly, a free press creates an informed citizenry and thereby deepens the functioning of democratic institutions.⁵

Free Speech Jeopardizing Free Trial

The meaning of jeopardy is the risk of conviction or punishment that a criminal defendant faces at trial.⁶ A trial means a formal judicial examination of evidences and determination of legal rights.⁷ A trial which is covered by media may influence the judges. This result could be a risk to the fair trial.

Interference with administration of justice is neither permissible nor unreasonable restriction. In a case relating to suicide by wife due to her harassment of dowry, an application of anticipatory bail was rejected by the Court below. When Special Leave petition was pending before the Supreme Court, an article appeared in a magazine based on the interview of the deceased's family, giving their version of tragedy and extensively quoting the father of the deceased which consisted of relevant and material information which could come in picture in the later stages of the trial. The Supreme Court took the view that such articles appearing in the media would certainly deal with the administration of justice and deprecated such practices and also cautioned the publisher and others related to publishing of such article and cautioned them about the trial by media in matters still *sub judice*.⁸

From the above cited case we must understand that though the free speech essential tenet to the parliamentary democracy, it is essential to point that with rights comes the duties. One must not in the exercise of his own rights forget his duties and also the restrictions to such rights. Freedom of press also comes within the implied meaning of restrictions as so in the constitution. With the rights so offered to the citizens a striking balance has been achieved by

⁴Mills v. Alabama, 384, U.S. 214.

⁵ K.G. Balakrishnan, *Reporting of Court Proceedings by Media and The Administration of Justice*, PL (2010).

⁶ *Jeopardy*, *Black's Law Dictionary* (9th Edition, 2009).

⁷ *Trial*, *Black's Law Dictionary* (9th Edition, 2009).

⁸ M.P. Lohia v. State of West Bengal, (2005) 2 S.C.C.686.

put the weight of the restrictions by the constitution. If we imagine the rights on one side of the weighing balance and restriction, duties on the other side then, these two weights equal have a striking balance.

Right to freedom of media has to be exercised responsibly and internal mechanism should be devised to prevent publications that would bring judiciary into disrepute and interference with administration of justice, especially since the judiciary has no way thereto by nature of its office. Proclivity to sensationalism is to be curbed in every case and it would be no answer to plead that publisher or others concerned did not know the contemptuous nature of publication or that it was done in haste. For the rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected.⁹

While media, in public interest, resort to reasonable criticism for the judicial act or the judgement of the Court but it should refrain from casting scurrilous aspersions on, or impute improper motives or personal bias to the judge. Nor, they should scandalise the Court or judiciary as a whole. The judgements of the Court are public documents and can be commented upon, analysed and criticized, but it has to be in dignified manner without attributing motives.¹⁰

Infringement of Rights of Accused

When a trial no matter civil or criminal is under media surveillance, it serves two purposes i.e. firstly, increases the consciousness of the people as well of the system on the disputed issue. Secondly, it causes a major amount of opinions to be formed for the parties in dispute and these opinions may be published. We must understand that one person publishing his opinion has his right to publish it but, also, it the right to of the parties in dispute to maintain their own privacy.

A very famous American case of the *People v. O.J. Simpson* wherein, every step of the case was covered by the media caused difficulties in the delivery of justice in forms of delay. Thus, though media coverage serves a public interest but on the other hand causes or may cause a delay in justice or improper justice.

Article 20 (2)¹¹ of Constitution says that nobody can be prosecuted and punished for the same offence twice or more times. This clause embodies the common law rule of *nemodebetvisvexari* which means that no man should be put twice in period for the same offence. If he is prosecuted again for the same offence for which he has already been

⁹M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 1047(7th Edition, 2016).

¹⁰Rajendra Sail v. M.P. High Court Bar Assn., (2005) 6 SCC 109.

¹¹INDIA CONST. art 20.

prosecuted he can take complete defence of his former acquittal or conviction. No person shall be vexed twice is a rule guaranteed under Article 20(2) of Indian constitution and also sec. 300 of the Code of Criminal Procedure, 1973, it is a procedural defence under both of the above provisions. That is no person shall be punishment or tried for a single act more than once if after following due process of law and by a competent forum.

In *Maqbool Hussain v. state of Bombay* the appellant had brought some gold into India. He did not declare that he had brought gold with him to the customs authorities on the airport. The customs authorities confiscated the gold under the Sea Customs Act. He was later on charged for having committed an offence under the Foreign Exchange Regulations Act. The appellant contended that the second prosecution was in violation of article 20 (2) as it was for the same offence, i.e., for importing gold in contravention of government notification for which he had already been prosecuted and punished as his gold had been confiscated by the customs authorities. The court held that the Sea Customs Authorities were not a court or a judicial tribunal and the adjudging of confiscation under the Sea Customs Act did not constitute a judgment of judicial character necessary to take the plea of the double jeopardy. Hence the prosecution under the Foreign Exchange Regulation Act is not barred.

200th Law Commission Report

The 200th law Commission report deals with the trial by media free speech and fair trial under Criminal Procedure Code, 1973. This report is precisely divided into 10 chapters ending with the recommendations.

The purpose of this report was to analyse the prejudicial impact on the media coverage of criminal cases. The extensive usage of the television as well cable network caused such issues to arise. The report extensively covers the criminal administration of justice. As well as points out the rights avail to the people under 19(1)(a) and its striking balance with the restrictions offered in the 19(2).¹²

The report also included various provisions of the Code of Criminal Procedure, 1908 in relation with the trial under media surveillance. Also, the publication which interferes or tend to interfere with the administration of justice amounts to the criminal contempt under Section 2 & 3 of the Contempt of Court Act and if in order to preclude such interferences, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions should be valid. The report also explicitly mentions Sanyal Committee in relevance to the amendment of the Contempt of Court Act.

¹²INDIA CONST. art. 19.

The report had various recommendations relating to majority the amendments in the Code of Criminal Procedure as well as the Contempt of Courts Act. The report dealt with the administration of criminal justice with reference to the coverage of media in forms of cable televisions as well as print media.

Thus, the report talks of investigation and impacts of media coverage on investigation and on various stages of trial. Further, also mentions various conventions and treaties which deal with the rights of the accused. Also, striking balance has been drawn between the rights of the accused and right of people or society as a whole.

Conclusion

Therefore, it must be concluded that although the right of freedom of press is an implied right under Article 19(1)(a) and gives power to the media and press of autonomy. Further, press comes out as fourth pillar in the democracy. But with the rights the restrictions are also mentioned in the same article but in clause 2 i.e. Article 19(2).

Also, an analysis was drawn between the conflicting rights if the public as whole and he parties which are in dispute, the impact of media coverage on judges as well as their judgment when the media coverage is allowed and the impact on the judicial system as a whole.