

Freedom Of Expression And The Judiciary

Chennai , April 22 -23,2006

AMIC-India, in partnership with The Indian Law Institute and Friedrich Ebert Foundation, India held a two day Seminar on "Freedom of Expression and the Judiciary" on April 22-23, 2006 in Chennai. This seminar witnessed a group of 14 sitting High Court Judges along with Justice A.P.Shah ,Chief Justice Madras High Court with senior judges, lawyers and journalists.

The seminar was inaugurated by Mr.G.Masilamani, Former Solicitor General of India and Mr.Vijay Menon , Chairman AMIC-India.

Mr.Menon in his welcome speech emphasised the need for accountability and professionalism by the media in its reportage. He said media deals with poor quality of news coverage giving more importance to speed at the cost of accuracy..The intrusiveness and insensitivity of the media and a seeming unconcern for the consequences of reportage.are a cause for concern, he said.

In her introductory speech Ms.Nandini Sahai , Country Manager, AMIC-India said that denial of truth as a defence in contempt of court offences was a contradiction in terms, for we have always proudly proclaimed 'Satyameva Jayate', truth alone prevails. The power of the courts to punish for contempt was like a Damocles sword preventing free and frank debate, discussion or comment on the judiciary system..Paradoxically, the threat of contempt was also defended as being in public interest.

Ms.Sahai made a special mention on AMIC-India's contribution in conducting two very successful seminars on "Media and Judiciary"earlier in Manesar(Haryana) and Lonavala (Mumbai). .Mrs.Sahai laid stress on AMIC-India's involvement in promoting such dialogues and in bringing together the various stakeholders, i.e. journalists, lawyers, judges and civil society organizations,. These contributed to a better understanding between the media and the judiciary on the valuable roles performed by each in sustaining and promoting freedom of expression and the rule of law.

The Special Address was given by Mr.N.Ravi, Editor , The Hindu.Discussing the Freedom of Press and the Role of Judiciary. He cited some examples where Judiciary played a mentor in enlarging and protecting the Freedom of Press. He compared the existing Judicial system of United States and India ,and said that Media Trials happen in U.S, where as in India we do not have Jury Trials , so Judges being influenced by the Media is remote.

The special Presidential and Inaugural address by Hon.Mr.Justice A.P.Shah Chief Justice, Madras High Court began with a judgement given in United States on the power of media "The hand that rules the press, the radio , the screen and the far-spread magazine ,rules the country". Justice Shah added that today, the world is a changed place, due in part to advances in mass communication.

The media's messages are no longer confined to a particular village, town, city or even to a particular country,. The technology now takes them, instantaneously, across jurisdictional borders.On autonomy of media he stated that today, the media

in our country is one of the freest in the world in terms of legal constraints. Almost the entire print media is owned by the private sector and except for a handful of channels most of the TV spectrum is today operated by private individuals and bodies.

Justice Shah said on Contempt of Court in the context of freedom of speech and expression, that there are three types of contempt a)one kind of contempt is scandalizing the court itself; b)there may be likewise a contempt of court in abusing parties who are concerned in causes in the Court c)there may also be a contempt in prejudicing mankind against persons before the cause is heard.

A trial by press, electronic media or public agitation is the very antithesis of the rule of law .It can only lead to miscarriage of justice, said Justice Shah.

The two-day seminar was designed as a closed door event, consisting of five thematic one and a hour sessions providing enough time for discussions and recommendations.

The first session of the seminar was devoted to"Contempt of Court:The Amended Act and the Media".The session was chairedbyJustice K.P.Sivasubramaniam(Retd), who said that the need to protect the nation and its organs from defamation has existed from time immemorial. It dates as far back as Kautilya's Arthasasthra. Any scandal against sovereignty leads to disarming of those institutions, and anarchy. The power to punish contempt is essential for the smooth functioning of legislature and democracy. Even judges can be punished for contempt.

Taking the discussion to a further level Mr. Vaikunth(Former Director General of Police) mentioned that it is the Judiciary which comes to the rescue of the legislature and also the Press. The press has to take recourse under Art.19(1)(a) which is available to all citizens. It thus presupposes a strong judiciary. A weak judiciary will weaken the right guaranteed by the Constitution under Art.19(1)(a) and it cannot be considered in its perspective.

Mr.Arvind Datar, Senior Advocate, Chennai spoke about the Proposed Amendment to Section 13 of the Contempt Of Courts Act , "the Court "May" decide if truth can be a defence in a proceeding for Contempt" He said in Australia, truth is an absolute defence in Contempt proceedings.

Mr.Sanjay Pinto ,Senior Correspondent, NDTV stated media acts as a watchdog for the functionaries of the State. The Contempt of Courts Act when implemented runs counter to the spirit of the freedom guaranteed by the Constitution. The Media and the Judiciary happen to be the last resort to redress grievances.

Both the media and the Judiciary should thus work together and remain dove-tailed and not contrary to each other.The next session was held on "Right to Privacy and Confidentiality",Hon'bleJustice A.K.Rajan(Retd.)chairedthe session.Throwing light on the topic he said, that the meaning of Freedom of Press according to Gladstone was - "there should be not be pre-censorship but the Press should not be free from censure as well"

In Indian Law, the Freedom of Press is only an implied right under Article 19(1)(a) unlike the First Amendment in the United States which clearly spells out the freedom granted to the Fourth Estate. In The Express Newspapers Case and Times Of India

case, the price control and page control order on Newspapers was struck down as unconstitutional as a restriction on the Freedom of Speech and Expression. Parliamentary Privilege is also a restriction on the Press under Art. 19(2) of the Constitution.

The Freedom of Press is not absolute, as is true of any other Freedom. It is correlative with the duty not to violate any law. A confidentiality clause may be entered in to by the Press with the Source, but the secrecy cannot be maintained under circumstances when the source of the same is called for in Court and it has to be revealed despite the confidentiality Clause

Mrs. Nagabooshanam, Former Vice Chancellor, Law University, Chennai said "in every job and every profession, there is some sacrifice of privacy". The communications which are protected under the Indian Evidence Act are those between husband and wife, professional communications between doctor and patient, advocate and his client, official communications. etc. So also information given to police and the media should be protected. The press should use this right reasonably for giving information and not for disinformation or misinformation. Investigative journalism must be used as voice of the public. Mr. A. M. Swaminathan (I.A.S. Officer, Retd.) in his presentation on "Right to Privacy and Confidentiality tried to show a clear picture on the context in which the right to privacy law came into effect. He also focused on the remedies of such irregularities.

According to him self regulation is the best method of curtailing the press. Meetings can be held between Media and the Judiciary to bring about morally binding guidelines. Voters have to be educated and not be misled by Media. Laws alone will not make a difference, though inspiration can be drawn from laws of other countries. Censorship is possible only in certain cases.

Mr. T.J.S. George (columnist, Indian Express) speaking at the session said, Press has a right to publish and the people have a right to privacy. The problem arises when one right competes with another. Western Courts have sided and supported the citizens, while in India the trend has been in favour of Authorities.

Commenting on the latest news trends, he said "News has now become a commodity". What is interesting to the Public is not necessarily of "Public Interest"?. The Press has been sensitive to happenings like massive kickbacks in the Bofors case and farmer's suicide due to famines and all this came to light only because of the Press. The reason why Sting Operations have become popular is due to the fact that there is no other way to bring out the truth buried in the lives of criminals.

The Jessica Lal case is another glaring example of Courts not performing and the Media stepping in. Trial by Media is in fact an aid to justice. The American press has the power of bringing down a political functionary. This is due to the differences between western and Indian democracy.

Mr. George brought out a comparison of a judge and a journalist: a) a judge must be independent and so also a journalist b) The judge should hear both sides and a journalist should also hear the people and the Government c) Reasons should be given by both d) The Judge acts on evidence, while a journalist's reports must be based and supported by strong evidence e) A judge should be above reproach, so also should a journalist.

Speaking in this session Mr. Karthikeyan (Former Director, CBI), held that among all wings of a democracy, if media loses its ethics and becomes sub-servient, it will lose its credibility. According to him, media in general and television in particular can make or mar individual and political personalities. The right to know is closely connected with the press. If there are curbs, Media cannot perform its public duty. It is the duty of the officers to share information with the media and trust them

The Fourth session was on "Media and the Judiciary: Time for a Reappraisal of their Relationship", which was presided by Hon'ble Justice Prabha Sridevan

Justice Khanna further said, the Press must be sensitive to and understand the circumstances and the socio-economic background from which Magistrates come and respond to that while publishing reports. Khushboo's case was also widely discussed by the Media. Major re-shuffles in the Judiciary do not normally happen as falsely portrayed by the Media.

Mr. Khanna commenting on the number of cases pending in various courts, said its high time that Lok Adalats are the grass roots level Judicial Forums, should be highlighted for role and must be shown from a positive angle as they are very helpful in reducing the burden on Courts.

Mr. Jayanth, Correspondent, The Hindu, said The Hindu has a moderate and just perspective of what is happening in courts. Mutual confidence has been maintained and relationship between Media and Judiciary will remain smooth if such confidence continues.

Mr. Jayanth said, judges can even instruct media persons on what to report and what not to report. People working for the media in all its forms are spread all over India and it is difficult for editors to monitor and control every one of them.

He asserted that suo-moto contempt proceedings must be transferred to other judges as no man should be a judge of his own cause. Courses can be commenced for journalists who report legal matters as they may not have knowledge of defamation, contempt etc., and they should be sensitized of such issues.

Professor Ambrose, Department of Legal Studies, Madras University asserted that relationship between media and judiciary should be like that of husband and wife. The press has been helpful in reflecting the real views of the Judiciary on several occasions. The Bhopal Gas Tragedy case is one such example

The Press has thus enormously benefited by the Judiciary and the Judiciary has also used the press for its purposes. The judiciary now wields enormous powers to discharge public and social obligations to achieve constitutional ideals.

Justice R. Balasubramaniam, High Court Judge said that according to Justice Bhagwati, every citizen should participate in the democratic process. The Supreme Court and the High Courts alike have come to the rescue of the press several times. The media must restrain themselves from showing violence. Reports must be fair. Private lives of individuals should not be interfered with unless involved in the discharge of their public duties.

The press should be cautious and careful in reporting unimportant matters which are of no social significance. They should be more responsible in reporting important decisions supported by the reasoning given by the judges. The reasons given by judges in support of their decisions are hardly reported.

The two day seminar came to a conclusion with presentations and finalisation of drafts and recommendations by the participants via an open forum chaired by Mr.Menon.

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