PRESS FREEDOM IN PAKISTAN: A Courts' Paradigm.

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In democratic societies, the decisions of the courts are generally considered as an important source of interpreting the concept of the freedom of the press and also in setting up its parameters. What have been the rulings and decisions of apex court and High courts regarding the Press in Pakistan? This paper is an attempt to answer this question. The methodology used in this paper is based on documents study in which this researcher has consulted more than 70 volumes of PLDs from 1947 to 1999 & other literature on the basis of purposive sampling.

Before promulgation of Press and Publication Ordinance in 1960, cases against newspapers were used to be registered under Press (Emergency Power) Act 1931. Under section 7 of the said act, the Government may require security upto Rs.3000 from a newspaper publishing anything that brings into hatred or contempt the Government.

In a case against Bi-weekly *Kausar* the court read the article in which **it was stated that, "those responsible for running the Government,** initially took charge of the affairs of state, without the sanction of a popular referendum or without ascertaining the will of the public. Those in power had no ideology in front of them and have no clear idea of how the Government should be run. The court remarked that "the ideas of what constitute sedition have changed with the

passage of time and a good deal of latitude should be allowed to the Press so that healthy public opinion is fostered by frank and even forceful criticism on the Government in power in this age of democracy and liberty. "But the court demarcating the limits of criticism said that "liberty to criticise must not be confused with license to hold up the Government established by law to hatred or contempt[1].

By dismissing the petition the court had put limitation on Press and not granted it a licence to criticise the Government established by law.

In another case against *Jarida Al-Islah* Lahore which published the manifesto of Allama Mashraqi's Party *Islam League,* that contained a passage "The Muslim have been deprived of extensive territories which resulted lose of revenue crores of rupees. The immediate consequences of the partition of the country have been the massacre of fifteen lacs of Muslims, uprooting of eighty five lacs of persons, the detention of seventy thousand Muslim women in the hands of the non-Muslims and loss of twenty one Muslim states". The court observed any person reading the manifesto with an open mind would inevitably be driven to the conclusion that none of these calamities would have befallen the Muslims, if the country had not been divided. There is a direct and serious attack upon the concept, which created Pakistan. The court held that the manifesto tends to bring into contempt the state itself and not merely some of the persons" and that the action taken by the Government was correct, and dismissed the petitions[2].

Through this decision the court in the early years of the creation of Pakistan had discouraged the debate on the question of the partition of India which resulted massacre of

fifteen lacs Muslims and lose of honour of Muslim women and crores of rupees.

This decision had fortified the image of independence because it was achieved at the heavy lose of lives and money.

Regarding a case against daily *Imroze* Lahore for publishing on article, which was claimed to have a tendency to bring the Government into hatred the court observed that "it is well settled in such cases under Press (Emergency Power) Act, 1931, the impugned article has to be read as a whole in a fair, free and liberal spirit. Too much stress must not be laid on isolated sentences even if they are couched in intemperate or objectionable language, party Government is the rule in a democratic regime and there should be ample latitude allowed to rival parties to criticise those in authority. This right should not be unreasonably or unduly curtailed by judicial fiat, especially during peacetime. Healthy public opinion can only be fostered by a frank and vigorous criticism of the party in power. At the same time it must be conceded that though the connotation of the word 'sedition' has undergone considerable changes with the passage of time, the law as it stands at present, has to be applied in each particular case and the courts can't refuse to administer a certain law even if it operates somewhat harshly".

The court after perusal of the whole article found it a humorous piece of writing and not fall within mischief of Press Act. The court set aside the orders of confiscation of security with majority while justice Kayani put dissenting view[3].

This decision revealed that a writing would be judged from the wholistic impression created in the minds of the readers

and not on the basis of isolated sentences. This ruling also points out that in democratic set up every Government has its rival political party or parties so their right to criticise the Government should not be curtailed and this is the way to foster a healthy public opinion.

The ruling, that the humorous piece of writing does not fall within mischief, had opened further venue for free speech i.e. one can criticise the Government in humorous and light way. Justice Kayani's dissenting note is quite understandable: since he himself was a good writer of humour, his insight had seen the seriousness of said article concealed behind the sugar quote of humour. But this was visible to a man of a calibre like A.R.Kayani and not to common people while the court judged the writing of article from the perspective of a common reader, this is why court decided in favour of daily *Imroze*. In a similar case the court remarked that it is irrelevant to consider whether the allegations made by the writer were strictly correct or not. The only question for consideration in such cases is whether the language employed by the writer, the motives of the writer would be immaterial[4].

In another case the court remarked that it is true that in democracy the Government for the time being in office is virtually the Government of the party returned with a majority in the election; yet it is as much a Government established by law. Whilst that party maintains a majority, it remains in power and whilst it is in power it is the lawful Government of the centre or of the provinces. Though the Government is a Government by members of the majority party, the Government as such has its existence quite apart from the party. The court opined that a criticism of the Government in power in any province is a criticism of the Government by law established in that province, though

incidentally it may be a criticism on the policy of the majority party[5].

It means that court did not give free license to criticise the Government on the ground that it is a criticism on a political party in power, rather the court had different approaches in different cases keeping in view the circumstances.

In a case the counsel for petitioner contended that the Tarjuman-ul-Quran is not a newspaper and action taken against it could not have been taken. The court held that the Journal in question contained the public news and comment and found that these news and comments tend to bring into hatred the Government[6]. Since the Press (Emergency Power) Act also had the definition of news-sheet as any document other than a newspaper containing public news or comments on public news etc., the plea taken by petitioner's counsel was not taken valid by court.

The courts despite of the fact that they supported the freedom of expression in the previous rulings, seem very careful regarding the sobriety of language used by the Press while criticising the Government, this impression is obvious from the following two cases.

A. The daily Hilal-e-Pakistan published two articles; one was related to a complaint in respect of wheat, which was alleged to have rotted in the godowns of the Government. In another article it was stated that "but our leaders are, intoxicated with power. It is feared that the riots of East Bangal will disintegrate- the nation". After 1947, falsehood has come to reign. The hearing and telling of truth has come to be an offence. Peace, comfort and happiness have become confined to few lofty castles. Bribery and nepotism have paralysed our official life. The court remarked that the

Press should express itself with such dignity and exaltedness as to Press us down with the weight of its opinion, to carry away with the sanity of its outlook. The court up held the action of Government dismissing the petition[7].

B. The daily Sind, Al-Wahid published in its various issues that:

1. Governor of Sind is abusing the power vested in him and instead of working for the betterment of Sind he is out to do it harm. (13-3-1952)

2. The Chief Secretary is nursing British ideas in his brain. He feels the officialdom has always to be given preference over the will and sentiments of the people. He bears a grudge and malice against Sindhis " (11-4-1952)

3. We strongly demand of the central Government that they should direct the Sind Governor to refrain from his policy of "Sindhi massacre" (23-4-1952).

The court held that these passages do come with in the mischief of the Press Act and dismissed the appeal[8].

The courts though very careful about the language used by Press while criticising the Government had also very liberal approach and directed that a distinction has to be made between the effect of an article which merely disparaging in nature and one, which has the effect of bringing the Government into hatred or contempt. Hatred and contempt are very strong terms. 'Hatred' means abhorrence or ill will and 'contempt' means 'scorn or disdain'. A feeling of hatred

or contempt does not necessarily follow from a disparaging remark that may be made against the Government or against its executive officers[9].

In this case the court clarified that any disparaging remarks do not necessarily means to bring the Government into hatred or contempt.

The court that have been hearing the cases under Press (emergency power) Act, 1931, since long, remarked that it is no longer good law and ruled that the restriction mention in it have no relations with the restriction mentioned in Article 8 of 1958 constitution[10]. Our this impression is supported in another case where the court observed that after the constitution of Islamic Republic of Pakistan came into force, the clauses of Press (Emergency Power) Act,1931 shall have to be read in conjunction with, and as limited by Article 8 of the 1956 constitution, which enjoins that "every citizen shall have the right of freedom of speech and expression subject to any reasonable restrictions imposed by law. The purpose of the constitution is that there should be as few restrictions on the freedom of the Press as in the light of the conditions prevailing in a country are absolutely essential. In fact, no restriction should be placed on the freedom of the Press except in times of grave emergencies, such as war, civil commotion on a large scale, and even then only in respect of matters involving the security of the state. Press is the mouthpiece of the public opinion. Its free functioning is more important now when the country has become free than it was before. It has to work as a link between the Parliament which frames legislation and the public, which express their hope and aspirations through it[11].

In this case the court seems against restriction on the Press except in times of grave emergencies and on matter

involving the security of state. It means that as the country started moving towards democracy, the realisation of the fact, that Press (emergencies power) Act, 1931 was promulgated by the foreign rulers for their own requirement, became obvious.

The role of the courts for the promotion of freedom of expression becomes more clear when in a case we see that if the Government sued a newspaper on a ground that was not valid and was ruled out by court and Government provided further justification, the court held that the Government can not introduce new grounds to justify its order if these ground have not already been mentioned in the order itself[12].

Similarly in another case the court remarked that it should not have left it to the court to pick out such words from the published articles which violated law rather it is the duty of one who initiated the case against a newspaper to clearly point out such words, If it is left to the court to search of offensive passages, the court and not the Government would become the accuser[13]. Similarly in a case the court examined some photographs, published by daily *Musawat,* Karachi that Government deemed objectionable under Press and Publication Ordinance, and remarked that if the test of objectivity is applied, these photographs would not attract the clauses of the ordinance referred to in the case and these photographs have been reproduced in several other leading newspapers as well.

The advocate General conceded that the pictures by themselves would not have justified action under the ordinance but the detailed captions given under the photographs clearly attract the provisions of the said law. The court agreed with advocate general but said that the law

required that the words contained in the captains ought to have been stated in the show cause notice[14].

The democracy and freedom of the Press are so strongly and directly related to each other that when there was no democratic constitution in the country the court had to rely solely on the Press (emergency power) Act 1931, which was promulgated by colonial rulers but after the constitution of 1956 came into force, the Press while defending its cases in the courts, have been taking the advantage of such article of the constitution that guaranteed freedom of expression. But after the imposition of Martial Law on October 8, 1958, that abolished the constitution of 1956, there was no force behind the Press guaranteeing it freedom of expression. In that era of without constitution the court held that criticism on the ministers of the Government as contempt and decided against the newspaper[15]. Had there been constitutional guarantees of freedom of expression at the back of this criticism, the decision would have gone in favour of the Press.

Our this impression is supported in another case where the court remarked that sensitiveness on the part of the Government may damage its goodwill, and at the time when Government has launched its programme of basic democracies, it is necessary for the Government to display large – heartedness, create good will and dispel suspicion[16].

This was time that then president Ayub Khan had introduced the system of Basic Democracy in the country.

Press and Publication Ordinance

On April 26, 1960 then president Ayub Khan, promulgated the Press and publication ordinance. This ordinance empowered the district magistrate to authenticate the

declaration of newspaper to only such person about whom the Government is satisfied that he is not likely to act in a manner prejudicial to the defence or external affairs or security of Pakistan.

The court in a case held that mere mention of this clause in order to refuse the authentication of declaration, is not a reasonable ground[17]. In another case the court also held that the Government should provide an opportunity of being heard before refusing the authentication of declaration to a person[18].

The court also held that the district magistrate should satisfy himself before refusing the authentication of declaration to a person. The satisfaction of the district magistrate should not be dependent upon the satisfaction of the Government rather the district magistrate had to judge before rejecting to authenticate. The declaration that the satisfaction of the Government is genuine or not. The grounds on which the Government wanted the district magistrate to refuse authentication of declaration must be communicated to the district magistrate, who after examining the ground, is competent to authenticate or refuse the declaration[19].

The court observed in a case that if a newspaper is not published in the case of a weekly newspaper, for two weeks in a calendar month and in the case of a monthly newspaper, for two months, its declaration becomes null and void. No order is needed in such a case. The provisions operate automatically. If one wishes to save himself, the only course open to him is to apply to the district Magistrate. He may, if satisfied on such application, hold that the declaration has not been rendered null and void[20].

The court remarked that if someone is behind the bar and thus unable to publish the paper, he could apply in writing

stating the reasons for this failure to publish their papers. The jail authorities are under a statutory obligation to supply writing material and post cards etc[21].

The court held that since the reason for non-publication was not communicated to the district magistrate, hence declaration had become annulled[22].

In an appeal that was made against this decision of single judge, the court remarked that a detained person cannot show to the satisfaction of the district magistrate that the newspaper has not been or cannot be published for reasons beyond the control and held that during the period when one is deprived of his liberty, the declaration of his newspaper do not become null and void and its declaration is intact and operative[23].

Giving its authority on the action of Government to annul the declaration of a newspaper, the court remarked that it could be taken only after a newspaper has been directed to furnish security[24].

Regarding the financial position to run the newspaper the court remarked that Press and publication ordinance required that the publisher should have the financial resources for regularly publishing the newspaper. The words financial resources are not synonymous with cash deposit. The expression 'finances' are used in the sense not only of cash resources but also used in the sense of loans, advances and grants. The bank certificate means to have the capacity of having such amount as and when required[25].

In another case the court made it clear that if the keeper of a printing Press wants to become the printer of a newspaper, he would have to get a separate declaration from the district magistrate for the purpose[26].

The court in another case that Government cannot refuse to authenticate the declaration to a person who is keeper of the Press and wants to become the printer of a newspaper and because If keeper is not likely to print any material which may be used for defamation then how he can be found otherwise by the same authority likely, to use his status as printer of a newspaper for defamatory purpose[27].

This means that it is obligatory for the district magistrate to authenticate the declaration of printer to the keeper of the printing Press. This seems necessary for the purpose of record that which and how many newspapers are being published in which printing Press.

After the restoration of democracy.in the country, the court in a case remarked that right of the freedom of Press is guaranteed by article 19 of the 1973 constitution and all the instruments of state are supposed to act in manner which may be conducive to the promotion of the object of the constitution[28].

PAKISTAN PENAL CODE

Delivering the decision regarding the justification of section 124-A (sedition) the court held that "the security of the State is the most sacred and the most important duty of the State. Anything that endangers the existence of the State itself is to be curbed at the earliest and therefore, where anything is said or otherwise expressed which endangers the liberty of the State, the protection given by the Constitution cannot be availed of "Every inch of the territory of the State being more valuable than the liberty of speech and expression enjoyed by any of its citizens, such liberty cannot on any social, moral, legal or political ground be used as a 'democratic ' means of liquidating the democratic State that

has bestowed that liberty". Therefore the Courts have held that the restrictions imposed by section 124-A of the P.P.C. are in the interests of the security of the state and are more than reasonable".[29]

In a case registered against daily *Tasneem* the court opined that "the law does not excuse the publication of photographs in news paper which are seditious. The mere fact that these charts and photographs had been displayed at the exhibition held at Karachi does not absolve the accused from liability under section 124-A".

The court remarked, 'it is true that in modern civilised countries, liberty of Press is fully guaranteed, but this does not mean that under the pretence of freedom, one is at liberty to bring into hatred or contempt the Government established by law'.

If certain alleged facts are used as a peg on which to hang seditious comments the truth of the fact does not excuse the seditious commentary".[30]

In another case the court held that "a prosecution under S. 124-A can only be made upon a complaint by the Government as contemplated by S. 196.Cr.P.C. Where the Home secretary has signed a complaint, the complaint is valid and proper and he need not be called to give evidence about the facts on which he has based it".[31]

The Government in developing countries is formed with coalition of other parties, so these may not be bold enough to register the case of such type because of their instability etc. keeping this in view the common citizen should have a right to lodge a case under this section.

The court in a case regarding Section 153-A, which makes punishable the promotion of hatred and enmity, held that if acts mentioned in section 153.A were not offences, public order will be prejudicially affected. The explanation attached to the section does not bar the pointing out the objectionable matters which are promoting feeling of hatred or enmity and the restriction on the liberty of the speech and expression imposed by section 153-A is, therefore reasonable, and they do not offend against fundamental rights guaranteed by the Constitution.[32]

In a case registered under section 292 that is regarding sale etc. of obscene books etc. the court remarked that what is obscene cannot be determined by opinions of majority of witnesses nor is the opinion of any particular witness, a true test whether a particular book/material is obscene or not, It is the duty of the court to decide on the facts of each case whether the material is obscene or not. Whether a picture/photograph/article is obscene depends upon surrounding circumstance and facts in each and every case.[33]

Section 292 of Pakistan Panel code prescribes punishment for the person who sells/distributes/publicly exhibits any obscene book, etc or any other object and not the person who purchases any obscene book or sees obscene object. The exhibition or displaying of a foreign/objectionable film is an offense yet the act of seeing such film is not punishable. Lest this Judgement is misunderstood, let it be added that from the moral point of view, the court have not approved the act of seeing obscene, immoral, objectionable film on TV/VCR, the court simply interpreted and applied the law of the land as it is. Court is obliged to administer Justice within the corners of the code and according to the cannon of the law regardless of consequences. The court was convinced that unless amendment is made in the relevant law restraining

act of seeing foreign/obscene/uncertified films, the person seeing such films on TV/VCR is not criminally punishable. So, the Legislature may in its wisdom make suitable amendment to bring the seeing of such films on VCR within the purview of criminal liability".[34]

The court had suggested in this decision to make amendment to bring the seeing of such films on TV/VCR within preview of criminal liability. It was 1990 at the time when court suggested so. But now after the lapse of ten years, we observe that the transmission through satellite are becoming popular day by day "which brought the world into our very own homes, that bowled us over completely, and for the first time gave Pakistanis a taste of what is now known as global culture. People were astounded to see the round the clock CNN coverage of the Gulf war for the youngsters the MTV music videos were something beyond their imagination, as were programs like Baywatch, the Bold and the Beautiful. For most people the spate of films from Zee TV were a dream come true".[35] Now the suggestion of the court to bring the "seeing of obscene film within the preview of criminal liability" seems to have become obsolete.

The court in a case registered under section 499 (defamation) clarifying the concept of defamation, commented that "if an allegation is true its publication will not be defamation in spite of the fact that is intended to harm the reputation of the person against whom the imputation is made provided the publication is for the public good. If however, the imputation is not true but is believed in good faith to be true and the publication is for public good, it is not the violation of law".[36]

In the same case the court commenting on the concealment of source of information on the part of the journalist, said

that "the law of the land did not give people connected with Journalism any special rights with regard to secrecy on the question of the source of their information and that they could not refuse to give information on relevant points on the ground that they were thereby infringing Journalistic etiquette. The idea entertained by some people connected with Journalism that they can keep back information from a court about a matter which can be validly inquired into by that court is entirely erroneous. If a person connected with Journalism appears as a witness in court, he can refuse to answer only those questions the asking of which the law does not permit and no others".[37]

The court further held that, "the law draws no distinction in this respect between ordinary persons and those connected with Journalism and it is clear that in law a journalist is bound to bestow the same amount of care and attention as any one else. From common-sense point of view, it would appear that those who publish newspapers have to be more careful before publishing an imputation which on the face of it is defamatory because what a man says will be read by few while what appears in a newspaper will be read by many".[38]

In another case commenting on the sensationalism the court remarked "this is not a healthy sign. This type of Journalism must be avoided by responsible Journalists in the interest of public at large. An editor should be most watchful not to publish defamatory attacks upon individuals unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information, which is sent to him, to be true".[39]

The court further remarked that "the false reports published in newspaper can cause irretrievable and irreparable

damage to the reputation and social status of a citizen and can bring bad name to the country. For this reason, it is necessary and desirable that journalists should be most watchful not to publish defamatory attacks upon individuals unless they first ascertain that there are strong and cogent grounds for believing truthfulness of the information which is sent to them. In the present case, both journalists and publishers have departed, derelict, and deviated from their duty thrust upon them by their vocation, namely, the Press, which is the fourth organ of the state in addition to the judiciary, legislature, and Executive. The Printer, Publisher, Editor, and proprietor of a newspaper are as much responsible for a defamatory, damaging and disparaging news report published in their columns as if they were the original author and motivator. In the case of defamation, there is no special privilege of a journalist. No doubt, honest criticism ought to be made and is recognised in any civilised system of law as indispensable both for publisher and citizen. However, doctrine of fair comment on matters of public interest is based on the hypothesis that the publication in question is one which broadly speaking is true in fact and should serve public interest. It goes without saying that the occasion of fair comment cannot be allowed to be used as a cloak for ventilating some personal vendetta against anyone because if this was allowed to be so, then fair comment would be relegated to the unfair - nay, unlicensed - comment".[40]

The court opined that "a newspaper man or a Journalist who publishes a defamatory statement which is not true, is in the same position in the eye of law as any other member of the public and is not specially privileged. On the other hand he has greater responsibility to guard against untruth for the simple reasons that his utterances have a far larger publication than the utterances of a common man and such

utterances are more likely to be believed by the ignorant by reasons of publication in Press. The duties of an editor, journalist or a newspaperman need not be over-emphasised; they are clear. He should be most watchful not to publish defamatory attacks upon individuals unless he first takes reasonable pains to assertion that there are strong and cogent grounds for believing the information which is sent to him for publication, to be true, that proof is readily available and that in particular circumstances, his duty to public requires him to make the facts known, if he acts in disregard of these precautions he is likely to be held liable for defamation".

The court quoted a case in which it was held that "it is no defence to a civil suit that the person who published the liable or a slander did not originate it but heard it or received it from another. Nor is it a defence that it was a current rumour and the person publishing it bonafide believed it to be true. It was remarked that as great an injury may arise from the wrongful repetition as from the first publication of slander".[41]

Clarifying a technical question that whether an action against a newspaper which is not published within the jurisdiction of a court is justifiable or not, the court was of the view that "it is sufficient in such case if it is shown that newspaper had its circulation or was available for sale at a particular place in order to give Jurisdiction to a court at such place to entertain an action for publishing a libel and it need not be proved strictly that some one actually read it there. Therefore, if the Plaintiff has an option to institute such a suit both at places where the newspaper is published or where it has its circulation".[42]

Giving the judgement regarding defamation before publication, it was remarked that "the court is invested with power and Jurisdiction in appropriate case, to restrain publication of defamatory material. The occasion for exercise of such power could arise only where material before court, prima facie, established that Press had threatened, or was likely to commit any act likely to cause injury. Mere apprehension on the part of an individual was not enough. Restraining Press to publish any such material against anybody would amount to pre-censorship, which, in absence of any reasonable restrictions imposed by law for any of the purpose specified in Article 19 of the 1973 constitution, would be violation of freedom of speech and Press".[43]

In a case regarding publication of libelous allegation by newspaper as statements of two political rivals leveling allegation and counter allegations against each other, the court held that newspapers are protected under the law and the constitution.[44]

In a case registered against weekly *Afaq* under 53 (1)d of Defense of Pakistan Rule 1971 which states, "Where in the opinion of Government any document contains any confidential information that is likely to assist the enemy, the Government may by order prohibit the further publication, in case of newspaper or periodical, the publication etc. of any subsequent issue thereof", the court held that "the provision in question authorises the Government to prohibit the further publication, sale or distribution of such document, or in the case of newspaper such issue thereof, which contains prejudicial material and such issue of the newspaper can be prohibited to be published subsequently, meaning thereby that the issue of the newspaper which contains prejudicial material can be prohibited to be published again or in other words such prejudicial material

cannot be allowed to be published subsequently. But it does not mean that the publication, sale or distribution of the newspaper or periodical itself can be prohibited irrespective of the fact whether any of its subsequent issue contains prejudicial material or not".[45]

CONTEMPT OF COURT

Article 204 of 1973 constitution provides that Supreme Court or a High Court shall have the power to punish any person who abuses, interferes with or obstructs the process of the court or disobeys its order or scandalizes the court or a judge contempt or does anything which tends to prejudice the determination of a matter pending before the court[46]. Because the power under this article the contempt of court Act 1976 is also there (which has repealed the contempt of court Act 1926) and courts can make use of it. Section 480 to 487 of the code of criminal procedure deal with certain classes of contempt of court, also a criminal contempt of the kind mentioned in section 228 of the Pakistan Penal code may be tried by a High Court[47].

The Jurisdiction to punish contempt was enjoyed by the Supreme Courts before 1962 constitution under the common Law of England. It was an inherent Jurisdiction, which authorized the courts to deal effectively with all that had a tendency to hinder the normal course of justice or affect the dignity of the court. The reason for the existence of this jurisdiction was that unless courts were armed with such a jurisdiction they could not properly function. Prior to the constitution of 1962 what was contempt of court was deducible from case -law. No hard and fast rule could be laid down as to the circumstances under which a certain act would amount to contempt of court. Constitution of 1962 and article 204 of 1973 constitution has removed that general

uncertainty as to what would be contempt of court but article 19 of 1973 constitution providing that ... there shall be freedom of the Press, subject to any reasonable restrictions imposed by law... in relation to contempt of court[48]. On the other hand the explanation to the article 204 states that fair comment made in good faith and in the public interest on the working of the court or any of its final decisions after the expiry of the period of appeal shall not constitute contempt of court. This explanation to the article 204 and exception to freedom of the Press mentioned in article 19 of the 1973 constitution has fortified the importance of the courts decision in determining as to what is and what is not contempt of court.

The punishment of the contempt of case is simple imprisonment for, a term, which may extend to six months or fine upto one thousand rupees or both. But here we intend to deduce from the court rulings regarding contempt of court, the extents and limits of the freedom of the Press.

The very first case against any newspaper after the creation of Pakistan was of contempt of court. In this case the court remarked. Judges loathe to take proceedings for their judgements. They do not claim to be infallible and realise more than anyone else that like other human beings they are liable to err. If therefore, those who are competent to express an opinion on their decisions assert that a Judge has gone wrong on a particular question and the opinion is expressed on an appropriate occasion, no Judge would ever object to the criticism even though he may consider it to be erroneous or unjustified. But if motives are attributed to a Judge and it is alleged that he gave a wrong decision intending to favour a particular party or to oblige or please or in fear of a particular person or authority, the position is different, because the suggestion then is that the very fountain of

Justice is tainted and consequently that the judgements that stream out of that fountain are impure and contaminated. In such cases it is the bounded duty of the court to step in to remove a potential menace to the confidence of the public in their Judges. When a Judge is reviled or defamed in the Press, he cannot contradict the publication nor can he take proceedings in his individual capacity to vindicate his reputation, because the very taking of any such action would bring the administration of Justice into disrepute. To punish the contemper *brevi manu* is the only course open in the circumstances and though such proceedings appear to invite the objection that the Judge sits in judgement in his own cause, that is not the correct position because such proceedings are taken not to protect the court as a whole or the individual Judges of the court from a repetition of the attack but to protect the public and especially those who either voluntarily or by compulsion, are subject to its Jurisdiction, from the mischief they would incur if the authority of the tribunal were undermined or impaired. Attacks upon the judges excite in the minds of the people, a general dissatisfaction with all judicial determinations and whenever man's allegiance to the laws was so fundamentally shaken it is the most fatal and dangerous obstruction of justice calling out for a more rapid and immediate redress than any other obstruction; not for the sake of the judges as private individuals but because they are the channels by which the king's Justice is conveyed to the people. "Prevention of apprehension to, and restoration of a damaged, public confidence in the administration of Justice is thus the true reason for the power to commit summarily for contempt in such cases. In the present case the publication in question tends to impair the confidence of the public in the impartiality and competency of the Judge and is calculated to give an impression to the public at large that cases before that Judge or in the court of which he is a

Judge are not decided on the merits but on extraneous considerations. That being the tendency of the article, it is difficult to conceive of a more serious attack on the reputation of the court or a more serious damage to the public confidence in the administration of Justice by this court which is the highest court in the province. Some actions to rehabilitate the position of the judge in the public esteem and to restore public confidence in the administration of justice by the court is therefore called for. Such action becomes all the more necessary because the court noticed a tendency among a section of the Urdu newspapers to indulge, for sensation's sake, in wild and unfounded criticism of all authority and to publish most irresponsible and intemperate attacks on courts. While this court does not in any way wish to restrict the liberty of the Press, the court warned the Press that when they criticise the judgement of courts or publish anything regarding courts they tread on dangerous ground and act at their own peril. While no judge would take exception to any free and fair criticism of his judgements, any attempt to misrepresent the proceedings before the judges or any attack on their integrity or impartiality will not be tolerated, for the simple reason that it is not for the Press or the public to criticise judicial determination of Judges. If every member of the public and any newspaper irrespective of whether it was competent to express any opinion in the matter or not were to criticise decision of Judges, the position will be Intolerable and the whole system will be brought into disrepute and obloquy. As the article in question amounts to contempt of court in more than one way, we cannot but take a serious view of the matter to prevent a repetition of such false accusations.

The position should be distinctly understood that judges merely interpret and apply but do not make the law, and in the absence of a statutory direction are not concerned with

its moral, ethical or religious aspect. If people feel that the Law does not accord with their views they should persuade the legislature to amend it but they have no right to find fault with or revile the Judge if in a case properly raised he rules that the law is not what they would wish it to be[49].

In this detailed judgement the court whole heatedly realized the limitations of the judges that they too are human being and are liable to err. The court allowed those who are competent to express their opinion and even judicial acts of judges are not above criticism provided that the criticism is in good faith[50]. But to see a verdict of a judge from doubtful eyes as he has intentionally favoured a particular party is contempt and in this situation the court has to step in because a judge cannot contradict the publication of the Press in his personal capacity. If the action against such newspapers is not taken, it will excite the minds of the people and a general dissatisfaction regarding judicial system would be fatal for the society as a whole.

In another case the court remarked that if the report amounts to a comment or expression of opinion on matters subjudice or has the tendency to influence the readers' opinion on those matters by suppressing or misrepresenting material steps in the proceedings, it will then amount to an interference with the due course of justice bv prejudicing mankind in respect of an issue and thus constitutes contempt of the court in which the proceedings are pending[51].

Making the concept of contempt more clear the court held "It is a misconception to think that publication of briefs, pleadings or petitions even without comment can, in no circumstances, amount to a contempt. Such publications, if one-sided may well have the undesirable effect of

prejudicing the party whose version is not also placed before the public"[52].

Elaborating further what constitutions contempt the court remarked that "It is now well-settled that all publications, which are calculated to or have the tendency to either excite prejudice against parties or their litigations while it is pending or to interfere with the due course of justice, will constitute contempt"[53].

In the previous case though allowed those competent to comment on courts decisions but in the above case the court made it clear that to express opinion on matters subjudice or if a report that intends to influence the readers opinion by suppressing or misrepresenting the facts amount to an interference with due course of justice and would constitute contempt of court. In the cases where the accused have taken full responsibility for a publication that amounts contempt of court without any reasoning and delay and offered unqualified apology, the courts took lenient view[54] but where the apology was not made at the earliest opportunity, or the attitude of the accused was such as to indicate any genuine remorse or contrition on his part for the offence committed by him. The plea that he did not intend to bring the court into disrepute or contempt was clearly not honest or truthful[55].

The court took serious view and held that where the accused insisted that he was in the right and contended that what he had done was within law, he should be punished[56].

In a case the court held that court can refuse to accept an apology which it does not believe is genuine. It can even, when it accepts the apology, commit an offender to prison or otherwise punish him. Furthermore, there cannot be both justification and apology, the two things are incompatible.

The court observed that apology is not genuine otherwise the justification would not have been pleaded[57].

In another case the court held that the question of intention cannot be taken as a plea of defense, for it is not necessary that in publishing an article in a newspaper, there should be proof of deliberate intention to bring a court into contempt. If the effect of the article is in fact to bring a court into contempt in the eyes of the public, contempt has been committed[58].

In this case the court clarified that the overall effect of a publication on the mind of the reader matters and not the intention of the reporter. Similarly the court also clarified that revision of the orders of a subordinate court by an upper court does not allow anybody to criticize the intention of the lower court that it had acted in bad faith or had shown partiality to one or the other party. But in case of lack of confidence in any court, there should be a valid reason. The court held that there are other means of redress for those who feel aggrieved. They are always at liberty to approach the proper authorities with their complaints but they are not at liberty to air their views in the Press[59].

In a case the court held that to anticipate a reserved judgement in the Press may embarrass the court because the final order may be otherwise. The court observed that nothing is more incumbent upon the courts of justice than to preserve their proceedings being misrepresented[60].

Regarding the fixation of responsibility for publication the court made it clear that the Editor, the manager, the printer, publisher and actual author of a report all are legally responsible in the fullest measure for the publications[61].

In another case the court observed that it is of no avail to the editor to plead ignorance of the publication, for in law he is responsible for everything that is printed in his newspaper[62]. And it is no excuse or justification to say that it is a quotation from somebody else. Even the repetition of contempt is a contempt[63] and each publication constitutes a separate contempt in itself[64]. In a case one who tried to wriggle out of the situation by throwing blames on others, the court dealt with on a different footing[65].

In a case the court made a reference of a case G.S. Gideon vs. The state (PLD 1963 S.C. 1) where the appellant had been convicted for contempt in his absence. It was observed in that case, that although there is no precise procedure prescribed to regulate proceedings in the High Court for contempt, yet it was necessary that the fundamental rules for the ascertainment of truth should be followed and the contemner should be given the fullest opportunity of defending himself[66].

Though the courts have been taking lenient view, where unqualified apology has been tendered but in a case remarked that an apology does not provide the contemner with an absolute excuse for the offending publication nor does it entitle him to a discharge as of right, for, it cannot remedy the evil caused. The court cleared that let no one be under the impression that the Press enjoys any special privilege of traducing the Judges nor should there be any impression that after one has grievously slandered and scandalised a Judge of a Supreme Court he can come to the court and get away with it by merely tendering an apology. Such a tendency must be curbed in the public interest itself[67]. The court where it intended to take lenient view had increased the fine and reduced the imprisonment to the period already undergone by the accused[68]. In a case the

court directed the editor to publish the apology entirely on the front page at prominent place in bold print without carrying any part of it to other pages[69]. In another case taking the lenient view sentenced the accused till the rising of the court[70].

But generally, the courts regarding contempt cases are so sensitive, this is obvious from the above cases. This is also obvious from a case where the court sentenced the accused just after four days of a publication[71]. This sensitivity is more visible when we seen in a case, in which a judge was alleged by a publication that he has committed contempt of court, the court remarked that if such petitions are encouraged then no Judge of a Superior Court would be able to function freely because as and when he decides a case against a litigant there will at once be filed an application of this type[72].

It is the general spirit of justice that one who himself is a party in a case, cannot be the part of the body deciding that particular matter. But in case of contempt against a judge the court is not ready to treat that judge as a party and remarked there is nothing wrong on the part of a judge who has been scandalized taking part in the proceeding for contempt[73].

Truth and facts are the basic requirement of justice but regarding the matter of contempt of court the English Law becomes so narrow that in a case the court remarked that a long series of cases is to be found in the law reports laying down that truth is no justification for contempt[74].

Since there is no fix formula for contempt proceedings and the technical accuracy is not required[75], the court in a case was reluctant to accept the apology on the ground that "there is neither precedent nor principle that one court has been scandalised and another superior court pardoned it.

This would be defeating the very object of a proceeding for committal for contempt"[76]. While in another case the court presided over by an acting Chief Justice, accepted the appeal lodged against the decision of the same High Court presided over by the permanent Chief Justice[77].

In a case of contempt, the court made it clear that this is no plea on the part of an editor that he has published a news or article on the assurance of any lawyer[78].

The court observed that all the cases of contempt of court are committed due to the lack of education and training of the journalists and suggested that "while making assignments for court coverage, proper education and training in that branch of journalism and its ethics should be kept in view by the chief editors; and with regard to the old and experienced reporters a short training facility in the same subject is provided to them as a refresher course. There would still be much better performance and results if the concerned sub-editors are also advised by the editors to keep in view an immediately visible and discoverable nexus between the headlines of the news and the detailed contents together with facility of their further training and vigilance by the chief editor. It is hoped and expected that with this and other steps which the publisher and/or the chief editors may deem to be necessary, the situation would improve to further considerable extent. It is also hoped that thus the occasion for issuing notice of contempt by the courts regarding their functioning and court proceedings, may not arise at all.[79]

The Supreme Court in its judgement directed the Government to take out from its clutches the subordinate judiciary on the magisterial side till 23rd March, 1994, by issuing necessary notification[80]. But Government continued

to stall the implementation of this decision and used the print media as one of the devices to criticize and oppose the process of separation.

The court for the very first time realized the importance of the print media and hoped the newspapers would play their role independently as a strong component in the fourth pillar of the state.[81]

As we have seen that before the promulgation of PPO, 1960 , the cases were dealt under Press(Emergency power) Act,1931, but after partition the courts supported the doctrine of free Press because it fostered healthy public opinion in a newly independent state, but also demarcated the limits on the Press that liberty to criticise the Government must not be confused with license to hold up the Government established by law to hatred or contempt. After the promulgation of 1958 constitution the courts decided the cases more liberally in favour of the Press and ruled that Press (Emergency power) Act, 1931, is no longer a good law, it has no relations with the freedom guaranteed in the constitution. The same was the attitude of the courts in respect of Press freedom after the enforcement of 1962 and 1973 constitutions. But during the period when there was no support of constitutional guarantees at the back of Press freedom, the courts had no ground to support the media. In the periods of Martial laws when the jurisdiction of the courts was restricted, the Press did not find any support from the courts. Although the courts gave benefit to the Press on technical grounds if any flaw on the part of the Government was committed in respect of procedural technicalities in taking action against the Press.

A very clear shift visible in courts decisions is that before PPO 1960 & PPO,1963, the courts used to take the facts into

consideration very keenly, but after the enforcement of constitution right from 1956 onward 1973, the courts mostly decided the cases on the basis of procedure and technicalities of the case, the benefit of which definitely went to the Press instead of Government which committed procedural shortcoming while taking action against Press.

The attitude of courts seem very liberal towards Press whenever Press was in confront with the Government. While deciding the cases of defamation, the behaviour of the courts happened to be strict towards Press and rather suggestive. But in the cases of contempt of courts, the behaviour of the courts was very strike and uncompromising. In these cases we find no leniency in the attitude of the courts and it compelled the Press to bow rather to kneel before the court. The law of contempt of court needs through reconsideration in the larger interest of the Press freedom and society as a whole.

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