

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

© 2022 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestion or complaint, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

The Rule of Sub Judice & Freedom of Speech and Expression: Scope and Restrictions

RIDHIMA CHANDANI¹

ABSTRACT

The purpose of the rule of Sub Judice is to prohibit interference in the administration of justice since disclosure could have an adversarial effect on the case. With the passage of time, the Parliament's interpretation of the rule has become less rigid. It is important to note that, other from contempt of court, there are no other restrictions that can be imposed on the freedom of speech and expression in relation to the matter(s) under consideration. It should be noted that merely expressing opinions on a matter under consideration will not be considered contempt of court, but caution should always be exercised not to scandalise the court or impute motives to the judges for any judicial act, or with the intent to influence the court or public perception in such a way as to jeopardise the 'Presumption of Innocence,' which is the fundamental principle of criminal law.

I. INTRODUCTION

Sub judice is a Latin term which means 'Under a Judge' or 'Under Judicial Consideration'. This rule is in regard to the laws dealing with the cases of Contempt of Court. It seeks to regulate the statements which can be made in respect of a proceeding either criminal or civil pending before civil and criminal courts and courts martial in any part of India and not in other judicial or quasi-judicial bodies such as Tribunals, etc. which are generally fact-finding bodies. The intent behind such rule is to prevent interference in the process of administration of justice as such publication might influence the case in an adversarial way. In certain cases, it even applies where the proceedings have not yet been started i.e., during the time of investigation, this was recently held by the Hon'ble Court in **Nilesh Navlakha v. Union of India**² because otherwise the image and the reputation of the accused would be derailed even at the stage of investigation.

Publication of matters which are sub judice in nature attracts liability under Contempt of Court Act, 1971. The act provides for two kinds of contempt: Criminal and Civil. Section 2(c) of the

¹ Author is a student in India.

² Writ Petition (Civil) No. Of 2020.

act defines 'Criminal Contempt' and Section 3 of the act provides for circumstances which will constitute the contempt of court. It specifies that if at the time of publishing the matter which caused the aforementioned interference the person publishing such statements was not aware of the fact that the matter is pending before the court, he will not be held guilty. Further, Section 4 of the Act subject to Section 7 states that a person shall not be held guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof and Section 5 provides that fair criticism of a judicial decision because the public has an interest in the proper administration of justice would not constitute contempt.

II. PARLIAMENTARY PRIVILEGE

According to the General Rules of Procedure (Rajya Sabha at Work)³ members of the Parliament are not allowed to have discussion on the matters which are sub judice as it falls within the reasonable restriction on freedom of speech imposed on the Parliament by way of the Constitution and also to prevent the proceedings pending before civil and criminal courts and courts martial in any part of India and not in other judicial or quasi-judicial bodies such as Tribunals, etc. which are generally fact finding bodies from being influenced by way of statements made in respect of that case beyond the realm of the court. However, it is at the discretion of the Speaker to decide whether a matter is sub judice or not but it should be based on a fair reasoning.

Further, following guidelines⁴ were laid down by a Committee of Presiding Officers appointed to consider the scope of rule of sub judice:

1. Freedom of speech is a primary right whereas rule of sub judice is a self-imposed restriction. So, where need be, the latter must give way to the former.
2. Rule of sub judice has no application in privilege matters.
3. Rule of sub judice does not ordinarily apply to legislation.
4. Rule of sub judice should apply in regard to proceedings before civil and criminal courts and courts martial in any part of India and not ordinarily to other judicial or quasi-judicial bodies such as Tribunals, etc. which are generally fact-finding bodies.
5. Rule of sub judice applies to questions, statements, motions (excluding motions in respect of leave to introduce a Bill, take a Bill into consideration, refer a Bill to a Select/Joint Committee, circulate a Bill for eliciting opinion thereon, pass a Bill) resolutions and other

³ Chapter—26 General Rules of Procedure (Rajya Sabha at Work)
https://rajyasabha.gov.in/rsnew/rsat_work/CHAPTER%E2%80%9426.pdf

⁴ Ibid.

debates.

6. Rule of sub judice applies only in regard to the specific issues before a court. The entire gamut of the matter is not precluded.

7. In case of linked matters, part of which is sub judice and part not sub judice, debate can be allowed on the matters which are not sub judice.

8. Rule of sub judice has application only during the period when the matter is under active consideration of a court of law or courts martial. That would mean as under: (a) In criminal cases - From the time chargesheet is filed till judgement is delivered. (b) In courts martial - From the time charges are preferred till the charges are confirmed. (c) In civil suits - From the time issues are framed till judgement is delivered. (d) In writ petitions - From the time they are admitted till orders are passed. (e) Injunction petitions - From the time they are admitted till orders are passed. (f) Appeals - From the time the Appeal is admitted till judgement is delivered.

But, with the passing of time the interpretation of the rule is observed not to be strict in the Parliament and thereby mere debate and discussion on the sub judice matters shouldn't be prohibited until and unless it is found to influence the respective court in any way or it obstructs the administration of justice.

III. CRITICAL PERUSAL OF SUB JUDICE RULE

The Constitution of India confers the fundamental right of freedom of speech and expression upon all the citizens of the nation as enshrined under Part III and specifically elucidates under Article 19 (1) (a). However, the freedom of speech and expression are not absolute rather bears certain reasonable restriction as per Article 19 (2).

The reasonable restrictions which can be imposed against freedom of speech and expression are as follows-

- i.) Sovereignty and Integrity of India
- ii.) Security of State
- iii.) Friendly relations with foreign state
- iv.) Public Order, Decency or Morality
- v.) Contempt of Court
- vi.) Defamation or incitement of an offence.

In the light of this article, it is relevant to note that sub judice applies before the judicial proceedings and therefore the restrictions which can be imposed upon speaking against the sub

judice matter is only restricted to contempt of court as per article 19 (2) and not otherwise.

Therefore, any contention on the point that no public discussion through debates in media or academic deliberations are permissible against the sub judice matter is not in consonance to the spirit of the constitution.

Further, it must be noted freedom of speech and expression is not only for the individuals but also for the media i.e., discussions and deliberations against any sub judice matter in any court of law be conducted on media platforms as well as the media persons can freely express their opinion about any such matter which is placed before any court for disposal.

As stated by Former Hon'ble Chief Justice of India Ranjan Gogoi at R.N. Goenka Memorial Lecture **“not only independent judges and noisy journalists, but even independent journalists and sometimes noisy judges.”** This shows that independence of media free from any restrictions is valuable asset for any democratic country and therefore the same cannot be curtailed merely on the ground that matter is pending before the court of law. It is well settled principle that a judge is not influenced or overpowered by media reports and acts as per facts and the evidences produced through his/her judicial mind. The words of Justice Felix Frankfurter a celebrated jurist and judge is of great relevance. He said “A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other, both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press”.

Therefore, in modern liberal democracy like India it would be highly demeaning to hold that media or any person through media or any other source must not express opinion on any sub judice matter.

It is very apparent that freedom of press and media is qua the freedom of individual in the society and to restrict such freedom on the notion that matter is sub judice before a court of law would be antithetical to the constitution. Merely presumptions of abuse of such right will also not be a contention of relevance because one or few incidents cannot lead to massacre of individuality and freedom for which the country has struggled and also cherished it time and again. To uphold such right it is relevant to quote former Prime Minister of India Jawahar Lal Nehru. He said “I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press”. Hence any idea to curb the freedom of press or individual other than the contempt of court cannot be permissible as

same will amount to illegitimate restrictions and unreasonable regulations.

The Hon'ble Supreme Court in the case of **Ministry of Information Vs. Cricket Association**⁵ has held that freedom of speech and expression means right to express one's convictions and opinion freely by word of mouth, writing, picture or any other manner addressed to eyes.

In the light of the foregoing, it is pertinent to mention that other than contempt of court there is no other restriction which can be imposed to curb the freedom of speech and expression against the matter which is/are sub judice.

The notion of contempt of court is also not elastic in nature to attach every criticism or opinion into its strings rather it has been time and again curtailed by the judiciary to cherish the idea of freedom of speech and expression and allow fair criticism for proper administration of justice.

In the case of **Perspective Publications Vs. State of Maharashtra**⁶ the court held it is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because 'justice is not cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.'

Later in **Ram Dayal Vs. State of UP**⁷ it was held that any such criticism or opinion expresses must not interfere with administration of justice or scandalize the court.

IV. CONCLUSION

Hence, it could be noted that merely opinions expressed on the matter sub judice will not be covered under the ambit of contempt of court but the caution must always be maintained to not scandalize the court or impute motives to the judges for any of the judicial act or with an intent to influence the court or public perception so that it in any way jeopardizes the 'Presumption of Innocence' which is the fundamental principle of the criminal law. Furthermore, the media have the freedom of speech and expression, which if restricted would jeopardise the very spirit of democracy and have a chilling effect on the fundamental right conferred by the Constitution. However, due care should be taken to ensure that the facts are not distorted or inaccurate in any way. It should not jeopardise the dignity of the judicial system. It is the responsibility of the courts to examine the facts of the publication and determine whether they are fair and accurate, or if they would have an adverse effect on the case at any stage of the proceeding.

⁵ 1995 (2) SCC 161

⁶ (AIR 1971 SC 221, 230

⁷ AIR 1978 SC 921