

Contempt of Court and Freedom of Speech: A Dispute of Rights and Dignity

Astha Nagori & Lavi Parwani

Student, School of Law,
Devi Ahilya Vishwavidyalaya, Indore
E-mail- nagoriastha@gmail.com
laviparwani1999@gmail.com

Abstract

The paper aims to present a comparative analysis between two foremost yet contradicting provisions prevailing in the country. On one hand, freedom of speech and expression is the basic human and fundamental right, while, on the other hand, contempt of court is the weapon used against the former right. The perfect irony is that the Constitution of India guarantees fundamental right to freedom of speech and expression vide Article 19, however it is noteworthy that the very same constitution snatches it away using the power to punish for the contempt under Article 129 and Article 215. The Right under Article 19 is to promote plurality of opinions but this right particularly when juxtaposed with Contempt becomes a controversial issue. There are a very few democracies that still provide contempt power to courts and India is one such nation. But it must be kept in mind that it is not the Judiciary which is sovereign but the Constitution that provides the institution with such powers and is hence, supreme. If courts start acting intolerant towards the critical reviews, it would mark the end of democracy. The dignity of judges is not so brittle that it would shatter with some opinions instead of getting motivated to work upon what is right. The paper aims to draw a comparative analysis amongst both the rights and their importance in democracy. The aim is not to sideline the provision of contempt but to realize the need to restrict it to protect the dignity of courts and not the caretakers. Judges deserve respect but not at the cost of threatening the critics, suppressing them and misusing their powers in the disguise of contempt. No right can be jeopardized to protect the pride and self obsession of judges.

Keywords- *Contempt of court, Freedom of speech, Judicial tyranny, Democracy, Right to life.*

Introduction

As quoted by Justice Sanjay Kaul (2020), “*One of the most cherished rights under Indian Constitution is to speak one’s mind and write one’s thoughts.*” The Fundamental Right to Freedom of Speech and Expression, a natural right is bestowed upon the citizens of almost every democratic country. The right is stipulated under Article 19(1)(a) of the Indian Constitution. The freedom includes not only the right to propagate one’s views but also publish them through freedom of press, commercial speech, right to broadcast, right to criticize, etc. However, much like the other Fundamental Rights, the legislative body imposes certain restrictions to the right of free speech under clause (2)¹ of Article 19. The restrictions are included to ensure that the right does not end up violating the democratic principles on which the country is built upon. These restrictions appear necessary today, as the right is being misused and this is where the question arises as to what comprises the quintessence of democracy? Article 19 is a right to express one’s convictions and aspersions. For the common man, it is the precursor for smooth conduct of any democratic country. Like the other pillars of democracy, the Judiciary too is legitimately subject to criticism. As held in **S. Rangarajan vs. P. Jagjivan Ram**² Right to form and express opinions and criticizing institutions of democracy (including the judiciary) are not the grounds to restrict the freedom of speech and expression. However, they should not lower down the officialdom of judges or obstruct the administration of justice.

Research Methodology

The methodology adopted during the research is secondary sources of data available such as books, provisions, articles, journals, statutes and reports. The authors have deeply studied the existing data and analyzed it in the present context.

Insight Upon the Contempt of Court

The concept of contempt had a long way and is derived from colonial legacy. It was rightly built up in England where the concept was introduced to protect the judicial powers of the King. The literal meaning of the word ‘contempt’ in the Cambridge Dictionary is “*a strong feeling of disliking and having no respect for someone or something*”. When interpreting the meaning in legal sense,

¹ The reasonable restrictions on Freedom of Speech and Expression are- in the interests of sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality in relation to contempt of court, defamation or incitement to an offence.

² 1989 (2) SCC 574 (India).

contempt of court means disrespect or disregard towards the court. No statute defines the term, as such, however, for the first time, the Contempt of Courts Act, 1971 (hereinafter, referred to as Act) defined rather classified “contempt of court” into civil and criminal contempt³ and further defined each of them independently, as “civil contempt”⁴ and “criminal contempt”⁵

The Contempt of Courts Act, 1971 was based upon the recommendations of a Special Committee headed by H.N. Sanyal, the Additional Solicitor General of India. Article 129 and 215 provide the power to the Supreme Court and High Court respectively, to punish for its contempt. The courts, being the court of record, have inherent power to punish for their own contempt and for the contempt of any lower court. The abovementioned powers are read in conjunction with Article 142(2) of Constitution and Section 228 of Indian Penal Code mandates the punishment for 6 months. In **Delhi Judicial Services Association vs. State of Gujarat & others**⁶, it was observed that the definition of criminal contempt is wide and covers every act that tends to interfere with the administration of justice and harms the dignity of the court. The ambit is huge and empowers the judges to punish those who try to lower the reputation of the courts. The aim of the Act was clarified in **Omesh Saigal vs. R.K. Dalmia**⁷, mentioning that its object is not to place judges in the place of immunity from criticism but to ensure that the image of the courts is not distorted.

RIGHTS VS. POWER-

Article 19 and the relevant provisions of contempt of court are hazy and uncertain per se. This can be seen through the two most interesting interpretations by the Supreme Court. In **P.N. Dua vs. P. Shankar**⁸, a petition was filed against the Union Minister who alleged that the Judges are biased in

³ Sec 2(a) of Contempt of Courts Act, 1971.

⁴ Sec 2(b) of Contempt of Courts Act, 1971. means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court,

⁵ Sec 2(c) of Contempt of Courts Act, 1971. means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

- i. scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
- ii. prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- iii. interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”

⁶ 1991 AIR 2176 (India).

⁷ AIR 1969 Delhi 214 (India).

⁸ 1988 (3) SCR 547 (India).

favour of the rich, the bankers and the Zamindars. But, he was not convicted of the offence. Hon'ble Supreme Court observed that bonafide criticism does not portray contempt of court and such criticism must be welcomed as long as it does not hamper the administration of justice. Whereas, in case of **E.M.S. Namboordripad vs. T. Narayan**⁹, the then Chief Minister of Kerala i.e., the petitioner, averred that the Judges are inclined towards the rich and was ultimately held liable for contempt of court under the Act. Hence, the law related to contempt is inconsistent and comes with an undefined boundary.

The aspect of contempt is one of the most under-theorized facets of Article 19. One questions the restrictions under clause (2) being so extensive that it limits the scope of clause (1) itself. In the cases of contempt, the judge is the prosecutor, the accuser and also the judge, who himself decides if the case comes under the ambit of contempt or not. It is violative of the principle of Natural Justice i.e., "*Nemo Judex In Causa Sua*"¹⁰. This absolute right to judges is abused at times to stifle the freedom of reasonable and fair criticism of the judiciary, no matter how beneficial it is for the better working of the judiciary. Although, the other side of the coin portrays that, such obstruction leads to better administration of justice. It also creates a sense of fear in the minds of people that any attempt to defame the judges or the institution shall come with consequences. Although, it is not only the defamers who have to face consequences but the institution too as the Judges get themselves and their authority devalued whenever it seems that they are taking undue advantage of the powers provided to them.

Supreme Court's take on the issue

Arundhati Roy Case

The inherent power of the courts come without any limitation but it is upon the Judiciary to exercise restraint, keep their personal vendettas aside and act upon what is beneficial for the better working of the institution. Ironically, the judiciary in India is given the power to decide if a comment against them is likely to disrupt the public's belief in the institution or not. In the case of **Re: Arundhati Roy vs. Unknown**¹¹, the Supreme Court initiated contempt proceedings against her alleging that she used abusive slogans in front of the Court and thus harmed the integrity of the Judiciary. The Hon'ble Court also asserted that she misrepresented the proceedings in the Sardar Sarovar Reservoir Dam case in an article titled "The Greater Common Good" in the Outlook Magazine. The Court expressed that

⁹ 1971 (1) SCR 697 (India).

¹⁰ No one shall be a judge in its own cause.

¹¹ AIR 2002 SC 1375 (India).

Roy not being a party to the case is trying to twist and turn the facts and is provoking the locals to hold *dharnas* against the aforementioned judgment. However, Roy didn't give in during the trial and stood by the fact that the natives of Narmada River had every right to protest peacefully and she being a citizen of India had the right to express her dissent towards the judgment and to make a common cause against it. She was thereupon sentenced to Simple Imprisonment for 1 day and had to pay a fine of Rs. 2000/-. Such intolerance by the Courts comes as a crippling blow to democracy. The Judicial Dictatorship is as dangerous as any other form of totalitarian rule. The law of contempt was introduced to maintain the public's respect and belief towards the Judges and their decisions. Court's shoulders should be broad enough to shrug off these trivial issues and focus on the larger perspective.

Prashant Bhushan Case

The latest and the most controversial contempt case is the **Prashant Bhushan Case**¹² where the Supreme Court found Advocate on Record, Mr. Prashant Bhushan guilty of contempt of court for his tweets. One of such tweets dated back to 2009 wherein he alleged the Judiciary with the charges of corruption. His most recent tweet was regarding the current Chief Justice of India, Shri Sharad A. Bobde astride an expensive motorcycle without keeping in mind the Covid guidelines and during the time when the Supreme Court was kept under lockdown denying citizen's right to access justice. He also questioned the functioning of past 4 CJIs and claimed that democracy has been dismantled by them. The Supreme Court took *suo moto* cognizance of the issue, held him guilty and imposed a fine of Re. 1. Mr. Bhushan denied to apologise for any of his tweets and reverted back by remarking that his tweets were nothing but constructive criticism and a fake apology for sure will amount to contempt. The matter was decided so hastily that one must expect other important issues to be handled with similar efficiency.

Freedom of Press & Contempt

Romesh Thapar vs. State of Madras¹³, was a landmark judgment wherein the Apex Court of India held that Fundamental Right under Article 19(1)(a) also includes freedom to media-houses and press to hold opinions and is one of the most important rights for proper functioning of democracy and in upholding the Rule of Law. Press and media houses help the general public in creating awareness about the day-to-day decisions of Courts and their critical reviews help in forming opinions and

¹² Re: Prashant Bhushan vs. Unknown; 2020 SCC Online SC 588 (India).

¹³ 1950 SCR 594 (India).

ensure righteousness. In the case of **Re: Harijai Singh & Anr. vs. Unknown**¹⁴, the Supreme Court has held that for the better functioning of a democracy, free and healthy press is a mandate. Two important cases related to Freedom of Press dated back to the post emergency period where; one **S. Mulgaokar**¹⁵ and **Shamlal**¹⁶, editors in The Indian Express & the Times of India respectively, were charged with contempt of court for their articles critiquing the **A.D.M. Jabalpur vs. Shivakant Shukla** judgment and questioning the integrity of the judges who delivered the judgment. Also, one of those articles went on to state that Justice Chandrachud and Justice Bhagwati shall not be considered for the post of CJs. However, the Constitutional Bench of the Supreme Court held neither of them guilty and upheld the freedom of speech and expression to the Press. However, one should be mindful that the Freedom to Press is not unfettered or absolute right and it comes with restriction. The Judges shall keep in mind the reasonableness of the protection provided to them under the contempt law as there are two public interests at stake i.e., fair trial and free press. Hence, using the contempt law to unduly advantage themselves by restricting critical publications shakes the faith of the public in the institution.

The Flip Side

Section 5 of the Act prescribes that contempt of court does not include fair criticism¹⁷ or accurate reporting of the issues. After the Amendment of the Act in 2006, truth was included as a valid defence but only when it was done with a *bonafide* interest or keeping in mind the larger benefit of the public as held in **Indirect Tax Practitioners' Association vs. R.K. Jain**¹⁸. In **Re: M.K. Tayal vs. Unknown**¹⁹, the respondent published an article alleging that the order, by the bench of CJI Y.K. Sabharwal with regard to sealing of shops and other establishments in the case, was given in order to benefit sons of Justice Sabharwal. He even presented evidence for the same and contended that he was telling the truth. Still the respondent was held guilty of contempt of court saying that this publication tarnished the Court's image and held that the defence of truth cannot be taken as it is not done in public interest or with a *bonafide* intention.

It is pertinent to mention that the concept of Contempt of Courts Act is to protect the dignity of courts and not the individuals, which is often misused by the judges. In the disguise of contempt, they tend to protect their personal dignity, hampering the very purpose of the act. Constructive criticism is the soul

¹⁴ AIR 1997 SC 73(India).

¹⁵ (1978) 3 SCC 339 (India).

¹⁶ AIR 1978 SC 489 (India).

¹⁷ Cr.A. No. 321/2001 (India).

¹⁸ (2010) 8 SCC 281 (India).

¹⁹ 2007 (98) DRJ 41 (India).

of democracy and is being killed by the so-called contempt proceedings to punish the true critics to satiate the personal ego of the judges. The Judges shall keep in mind that the power shall be exercised not to protect the dignity of an individual judge but to protect the malignment of the administration of justice²⁰. In **C.K. Daphtary vs. O.P. Gupta**²¹, a booklet was published and circulated by the respondent, mentioning the charges of dishonesty against a judge. The Court laid down that, to constitute the offence of contempt, the attack must interfere with the due course of justice and mere personal attack does not attract such offence. In **Shreya Singhal vs. Union of India**²², the Court expanded the scope of expressing oneself and held that there shall be actual hindrances in exercising the right to free speech and only then, the restrictions in clause (2) shall be claimed.

International References

“Power of judiciary lies neither in deciding cases, nor in imposing sentences, nor in giving punishment for its contempt, but in the trust, confidence and faith of the general public” (Marshall, 1820).

Judiciary assumes that it is supreme as it holds higher position over the legislature along with executive by way of the power of judicial review and various other powers enshrined in the Constitution. However, people are the real power-providers and thus the real power-holders, who are free to express their dissent on the actions of authorities, also tagged as “contempt” is browned for the purpose of satisfying their own pride. Courts and Judges are open to public scrutiny and therefore should not pretend to be fragile flowers, instead must take the criticism positively, restoring the trust of the nation in the judiciary.

In most of the foreign countries, laws relating to contempt of court are no longer in use, upholding the fundamental and foremost right to freedom of speech whilst disregarding the provisions relating to contempt. England abolished the offence of “scandalizing the court” in 2013. UK and Canada portray a liberal approach towards the offence of contempt; however, when there is a real threat to the administration, they never fail to take cognizance. Lord Sidney Templeman, House of Lords, UK, did not prefer any proceedings even when he was pictured as cartoon and captioned “*You Old Fools*” by ‘Daily Mirror’. Quite surprisingly, the first amendment to American Constitution creates the right to freedom of speech, while in India; the first amendment further restricted it. Thus, on comparing the situation of other foreign countries, with that of India, it could perhaps be observed that, laws relating

²⁰ AIR 1998 SC 1895 (India).

²¹ 1971 1 SCC 626 (India).

²² W.P. Cr.L. 167/2012 (India).

to contempt are vague, misused and overly emphasized whereas, the right to freedom of speech is merely mentioned in the Constitution.

The Universal Declaration of Human Rights (UDHR) recognizes Right to Freedom of Speech and Expression under Article 19²³.

As held in **Malcolm Ross vs. Canada**²⁴, Article 19(2) of International Covenant on Civil and Political Rights (ICCPR), embraces such comments that seem deeply offensive. Despite this double burden, India, as a nation fails to uphold the rights and dignity of individuals, while protecting the pride of judges.

Analysis

“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter”, highlights the importance of Freedom of Speech (Washington, 1783). This does not imply that absolute freedom to speech should be guaranteed to the citizens of the country. An efficient democracy demands efficient criticism. One cannot be slapped with the threat of contempt while exercising his freedom of speech in its true spirit. Judiciary is no different from dictatorship if it continues to punish those who raise voice against its command instead of overcoming the prevailing shortcomings. When a nation is silenced, it becomes blind and acts merely as the puppet of those in power, thus demolishing the true essence of democracy.

In this chaos of contempt and freedom, the nation must realize that both the provisions hold vital importance, i.e., freedom of speech, along with constitutional importance holds international onus, while contempt is essential to protect the dignity of judiciary. It is necessary to understand that there is a very fine line between ‘court’ and ‘judges’, the interpreters of law often use the weapon of contempt to protect their own dignity instead of courts’. Similarly, a very fine line exists between criticism and disrespect. The aim is not to eradicate the contempt laws but to understand that law shouldn’t be vague enough to cover the ambit of judges along with courts. The nation needs a clear, liberal and apt law to protect the dignity of the courts which also allows constructive and relevant criticism of the judges, their actions and judgments that helps in smooth working of democracy. Judges are always looked upon with utmost respect and dignity, they hold the onus to punish the offenders and serve justice but does this imply that they are always right and couldn't be criticized?

²³ “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

²⁴ CCPR/C/70/D/736/1997 (Canada).

Conclusion & The Way Forward

In democracy, it is not necessary that everyone should sing the same song. The question is not of contempt or free speech because the prior is a restriction to the latter and was introduced to maintain the constitutional machinery. And any attempt to stifle the power of Judges to punish for contempt is a death knell to democracy. The restrictions under Article 19 were not introduced to overpower the Article itself. Judges should understand the importance of healthy and constructive criticisms for a democratic country like India. We adopted this law from the UK but today, it has abolished the contempt law and yet, we keep cringing on all those norms they gifted us. The political scenario during the years when contempt law was introduced and the current scenario have changed a lot, and hence, shall the law be modified. “*Free Speech is nothing without free consent*”; hence, Judges should keep their shoulders broad enough to shrug off all the critical comments (Rushdie, 2014). The Judges alike all other public institutions are subject to both criticism as well as applause. The painful robust criticisms and heightened scrutiny are necessary for strengthening and effective working of the Courts. The Judges in India are touchier than those in other countries. The Judges need to understand the difference between libel and contempt, because the right to punish against contempt was introduced by our forefathers to secure public faith and respect for the Judiciary as a whole, and it shall be acted upon as the last resort. According to a report of the Law commission, the courts should give heed to civil contempt (i.e., willful disobedience of the judgments) only. It is high time the Parliament reconsiders the Law and brings it in line with the international standards. Also, a Constitutional Bench shall deal with this matter urgently since there are various and varying judgments of Supreme Court and High Courts and the need of hour is to establish a homogenous law regarding the same. There shall be a review mechanism to provide safeguard against judicial tyranny.

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