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# Contempt of Court

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## ABSTRACT

*Speech is almighty's gift to mankind. With speech, we are given a medium to express our views, opinions, affirmations and negations in a lucid manner. Had there been no words, the concept of sign language would also stand meaningless as symbology at its fundamentals is a system developed from gestures surging in spoken and written language. Free speech is a necessary precondition to the enjoyment of other rights, such as the right to vote, free assembly and freedom of association, and is essential to ensure press freedom. However, there is a clear and worrying global trend, including in western democracies, of governments limiting vibrant discussion and debate within civil society and among civil society, political leaders and government. Therefore, freedom of speech is a natural right acquired rightly after birth of an individual. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). Hence, it becomes a basic right that stands uncompromisable at any cost.*

*Undoubtedly, our constitution makers had also provided the statute of fundamental rights to freedom of right and expression. In the light of how our constitution is open for interpretation at one end is one aspect from where reasonable restrictions come in picture. These restrictions in context of freedom of speech and expression stands solely on one interrogation that is 'How much freedom is good freedom?'; in aim to answer this question, we will be dealing with the details of contempt, abstractions of freedom of speech, comparative analysis with English law and legal framework of a few other nations whose constitutions provide the citizens with progressive and absolute purviews regarding concept of contempt and freedom of speech. In a nutshell, we conclude the analytical research with a detailed critical analysis of the landmark case of Prashant Bhushan.*

## I. INTRODUCTION

Fundamental Rights, as enshrined in the Part III (Article 12-35) of Indian Constitution, are those rights which are significantly essential for moral, spiritual and intellectual development

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of citizens of India<sup>2</sup>. As these are essential for overall development of citizens, they are termed as Fundamental Rights. These include individual rights which are common to most like freedom of speech, equality before law, freedom of assembly, freedom of expression, cultural and religious freedom etc.

Taking in account a broader perspective of separately sole element that is 'freedom of speech', the need to mention Article 19 (1) (a) becomes a crucial aspect. Henceforth, Article 19 (1) (a) of the Indian Constitution says that all citizens have the right to freedom of speech and expression. Freedom of speech and expression explains the right to express one's own opinions and convictions freely by printing, pictures, words of mouth or any other suitable mode. It is a principle that supports the freedom of an individual or community to articulate their views, opinions and ideas without fear of retaliation, legal sanction or censorship. Thus, it also enriches the expression of one's ideas through any visible representation or communicable medium like signs, gestures etc. This expression also connotatively includes publication and following the corollary freedom of speech is included in this category<sup>3</sup>. The most necessary objective in a nutshell is the free propagation of ideas and this propagation explicitly needs a platform, then the propagation of ideas is secured and safeguarded by freedom of circulation. Rightly said, circulation without propagation would hold negligible or comparatively less value. However, Freedom of press is not explicitly and absolutely mentioned in Art 19 (1) (a) of the constitution and in the numerous debates of constituent assembly, it was stated clearly by Dr. Ambedkar, Chairman of the Drafting Committee, that no special mention was necessary at the cores on the grounds that press as a collective entity or an individual or citizen were all treated equally as far as the right of expression was concerned.

Freedom of speech and expression has four brief special purposes to serve:

1. All members of society irrespective of certain biases would be able to form their own beliefs and communicate them freely to others.
2. It helps in the discovery of truth.
3. It helps an individual to attain self-fulfilment.
4. It provides an efficient mechanism by which it would be recklessly possible to establish a reasonable balance between social change and stability.<sup>4</sup>

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<sup>2</sup> Constitution of India-Part III Article 19 Fundamental Rights.

<sup>3</sup> *In Favour of Freedom of Expression: Section 295A as Cornerstone of Censorship*. Journal of the American Institute of Religion, Dialogue, Vol. 18, No. 1. Retrieved 30 September 2016.

<sup>4</sup> Contempt of Court: Finding the Limit, 2 NUJS Law Review 55, (2009)

## II. DOCTRINE OF REASONABILITY

### What are reasonable restrictions?

Freedom of speech is the mother of all other constitutional liberties. Right of freedom of speech under article 19 (1) (a) is also subjected to the reasonable restriction in Article 19 (2) subsequently. The constitution provides with total 8 grounds of reasonable restrictions. From a connotative point of view, no freedom can be completely unrestricted or absolute.

In the case of *S.Rangarajan v. P.Jagjivan Ram*<sup>5</sup>, an affirmation, stated that it is appropriate to convey and form an opinion which does not cost the grounds of defamation and that criticism is valid which is constructively secured and addressed under the ambit of freedom of speech and expression. The judgement stated that democracy calls for policy criticism and open discussion.

According to section 2 of Contempt of Court Act, 1971<sup>6</sup>, the contempt is classified under two procedures- civil and criminal. Later in 2006, the contempt is also pertinent to truth as a defence. Nevertheless, after such an amendment, a person can be made liable for a statement made in public interest. In *Tax Practitioners Assn. vs R.K. Jain*, court held in its judgement that 'truth with a basis of reasonable facts are allowed as defence if contempt of court is held with proceedings related to any statement made or published in a speech, editorial or an article. The prominent classification is that such defence shall not be a cover up with a rigorous attempt to scandalise the court.'<sup>7</sup>

In *Maneka Gandhi vs Union of India*<sup>8</sup>, the supreme court held that freedom of speech is subjected to no geographical boundaries or limitation and it carries in it's womb the right to profess, produce and progress one's thoughts, opinions not only within the boundaries of the country but also abroad and overseas.

Hate speech laws are mostly misused by people holding high statutes and powerful organisations. However, in such cases, conviction is used as a form of intimidation which leads to self-censorship by people. Books and texts written in history are also subjected to criticism many times.

In article 19 (2), terms like 'decency and morality' offer much vagueness and hence enables the state and local police to do moral policing of religious groups, media, and entertainment platforms and often label liberal ideas and progressive ideas deem as moral and indecent.

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<sup>5</sup> 1989 SCR (2) 204, 1989 SCC (2) 574

<sup>6</sup> S. 2(c), The Contempt of Courts Act, 1971.

<sup>7</sup> K. Venkataramanan, What is Contempt of Court, *The Hindu* (2/08/2020)

<sup>8</sup> AIR 1978 SC 597.

### **III. CONTEMPT OF COURT**

#### **Origin of contempt of court**

What is contempt? In its simplest and elementary form, contempt is the state of being despised, disgraced or dishonored. Similarly, it can be concluded that contempt of court is any wrongdoing or behaviour or misconduct that challenges or conflicts with the integrity, superiority and authority of the court. These acts might include witness tampering, failure to comply with requests, interruption of proceedings, withholding evidence, defying a court order or maybe in the recent times, dismeaning or tweeting your opinions out on a Supreme Court Judge.

Joseph Moscovitz explains the wide and excessive nature of contempt of court as ‘Proteus of Legal world’ that in itself acquires endless interpretations. The term ‘scandalising the court’ with its implied meaning has been the subject matter of numerous litigations due to its nature of ambiguity. The uncertain and vague tendency has seen emergence of plethora of cases like ‘E.M Sankaran Namboodiripad v T.Narayanan<sup>9</sup>’ & ‘Re: Arundhati Roy v Unknown<sup>10</sup>’ in which judges has subjectively used their judicial discretion to punish any individual despite the act not fulfilling or adhering by the necessary prerequisites that makes these cases considerable under the Contempt of Court Act,1971. This not only came up as an arbitrary and unrestrained restriction to the right of Freedom of Speech and Expression under Article 19 (1) (a) but also tarnished the image of judiciary in the minds of common people.

#### **Civil and Criminal Procedures in India**

The Indian constitution vests the power in hands of the High Court and Supreme Court to punish for contempt in Article 215 and Article 129 respectively. These articles are supplemented in the changes made in The Contempt of Court Act, 1971 which is the primary source of legal framework responsible for the regulations of acts of contempt in the Indian landscape. Section 2 of this act divides the contempt into two kinds-:

- i) Civil Contempt- dealt in Section 2 (b), refers to civil disobedience to any case, judgement, decree or order of the court.
- ii) Criminal Contempt- dealt in Section 2 (c), defined as ‘the publication (whether by words-written or spoken, by visible representation or by signs or any other means) of any matter of any other act which scandalises the court or establish prejudices on any judicial proceeding or

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<sup>9</sup> 1970 AIR 2015, 1971 SCR (1) 697

<sup>10</sup> AIR 2002 SC 1375, 2002 (1) BLJR 811

interferes, obstructs or tends to obstruct any judicial proceeding.<sup>11</sup>

#### **IV. COMPARATIVE ANALYSIS WITH ENGLISH LAW**

The United Kingdom framework of contempt court is similar to that of India with a few codifying acts pertaining to contempt.<sup>12</sup> The ambit of contempt in India and the UK is also analogous in terms of civil and criminal procedures. The only aspect which distinguishes both of them is the absolute absence of the term 'scandalising the court'. Even though this term is adapted in Indian context from the UK, the same was excluded by Section 33 of the Courts and Crime Act<sup>13</sup>, 2013 on the explicit

recommendation of the law Commission which entirely abolished the concept of scandalising the judiciary under contempt of court. One of the grounds of this abolition is the notion that the offense of scandalising the court infringed with the fundamental right of freedom of speech and expression.

The same reasoning can be given in Indian context due to abundance of notable instances and cases where judges have overreached their judicial prowess to give effect to Section 2 (c) of the act that subdues the individuals thereby leading to violation of Article 19 (1) of Indian Constitution.

The Indian framework of contempt of court suffers from a similar disguise. The scorpious nature of Section 2 (c) often enables judges to take their suo moto cognizance of a case of contempt under the garb of 'protecting the authority of law' to protect their own honour and dignity as an individual without any reasonable cause. On the contrary, in a landmark report of New South Wales discussion called as Western Australian Report proposed the test of prejudicing contempt should be adapted in the legal framework as to subtract all the prejudices or assumptions any juror would hold at the time of decision making with the rationale that assumptions made on weak premise lead to unfit conclusions and hence it would obstruct the transparency and trustworthiness of justice system. The same scenario can be advocated in Indian Legal Framework, the media and social platforms hype up a certain situation to such an extent that probability of obstructing fairness in the process of decision making stand much higher than the probability of decision making on crystal clear arguments and facts proposed during the court hearings.

Besides, Australian legal framework promotes a variable misconduct attempt by any juror or

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<sup>11</sup> 274th Law Commission of India Report, Review of Contempt of Courts Act, 1971

<sup>12</sup> 335th Law Commission of United Kingdom Report, Contempt of Court: Scandalising the Court, (2012)

<sup>13</sup> S. 33 Crime and Courts Act, 2013 (United Kingdom)

entire jury on the ground that cases holding judicial deliberation, at any cost, cannot be disclosed to any source outside the ambit of jurors and any such act is notices, for whatsoever reasons would constitute to contempt of court. On the contrary, the majority of jurors in case of Jerome Thompson commented on the legal fraternity and hence they opposed the deliberative concept of non-disclosure of discussion that took place inside the room of decision making. In Victoria, the contempt law was amended in Juries Act 2000 to counter this deliberation of contempt as a criminal offence, as stated in Section 78. Hence forth, an analytical conclusion can be drawn out that different legal frameworks have different definitions of contempt and their unique interpretation also change upon the interventions related to it, so even all acts of contempt are not identical, it varies upon countries.

## **V. FREE SPEECH AND CRITICISM (IN CONTEXT TO PRASHANT BHUSHAN CASE)**

The Hon'ble Supreme Court of India initiated charges of contempt against Prashant Bhushan, a public interest lawyer and an activist. The case was initiated under Sue Moto cognizance for two tweets posted on Mr. Bhushan's twitter account, one made a comment on Chief Justice Of India sitting on a Harley Davidson which is owned by the politician of a ruling party, in this tweet he also highlighted the absence of masks in the time of coronavirus pandemic. The second tweet was a critical comment on supreme court's role in destroying democracy in the nation by calling eminent people in judicial prowess corrupt and dishonest. The petition was filed by Adv. Mahek Maheshwari addressing the tweets as 'cheap publicity stunt'. What needs to be reckoned here is had there been a common man in place of Mr Bhushan, the very same statement would be rather a buried hatchet than this ongoing havoc. Criticism of free speech sweeps in when such contradictory situation arises where we are given a defence of free speech, which holds that people are only free to the extent that they're allowed to speak what they want, read what they want and interpret it in one's own way. Conclusively, a stringent libertarian has insurmountable freedom of speech but no premise can be made on the grounds that this speech has any value, many times statements are made on the weak and vulnerable foundations rather than any inviolable ground.<sup>14</sup>

Another interrogation that comes out of the way here is - if free speech is an inherently good aspect or the bad aspect for the society? In the words of Mill, "People have to be educated, and they have to be mature." These are two intricate conditions but not always aptly applicable as sometimes it is very people belonging to educated parts of society that demoralize and misuse the freedom of speech leading to labelling it as a bad aspect. The main

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<sup>14</sup> <https://globalfreedomofexpression.columbia.edu/cases/in-re-prashant-bhushan-twitter-communications-india-pvt-ltd/>

stature to be stumbled upon here is the requirement of the real marketplace of ideas to be conceived as the truth. It is improper and irrational to think we will be able to discover the truth or justifiable outcomes by just permitting people to see whatever strikes their process of thought, make any claim they believe is reliable. The disputes arise if there is a constant disagreement about reasonable restrictions. It basically depends on the kind of control and regulation which participates in passive involvement. The most reasonable involvement enhances freedom and autonomy by bringing substantive materials in the light of attention. Regulation is not significantly compatible with free-thinking but restrictions are imposed on freedom of speech ironically. In a nutshell, the best prima facie argument for connotative freedom of speech is becoming skeptical about whether the restrictions are constructive or destructive, whether restrictions are the gatekeeper or a breakthrough in the ambit of freedom of speech stands pretentiously perpetual.

## **VI. CONCLUSION**

Criticism is an important ingredient in the modernistic society. In the Section 5 of the contempt of court act, it is given that fair criticism of any judicial act is not contempt and any person will not be held liable where he/ she is merely criticizing or sharing his/her opinions. The only aspect a person should keep in mind is that his comment or criticism is not subjected to malicious or defamatory accusations.

Criticizing the courts or the judges if done in a right way will only work in the direction of betterment of the judicial system and its functioning. Criticism done in good faith on approved merits is an absolute necessity and it should be appreciated and empowered as it allows belonging to a non-judiciary ambit to keep an eye on the judiciary system. Keeping a blind eye and having entire faith without a sense of personhood is not an expected trait of vigilant citizens.

As responsible citizens, who abide by the law, it becomes our primary duty to help maintain the dignity of the courts of law and at the same, we are required to possess the fundamental right of speech and expression to provide the judiciary with fair and constructive criticism.

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