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Case Comment: Re Prashant Bhushan and Anr

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ABSTRACT

Constitution of India forms the supreme rule of law. The power to protect the sanctity of it is imposed on the judiciary. That implies, while the judiciary has to ensure the rights and freedom of the citizens by administering justice, it also has to ensure that no external force is influencing its decisions and causing hindrance in such administration of justice. This is why the provisions of contempt of court act are significant.

Herein, the case comment of Re: Prashant Bhushan and Anr, we will discuss the threat that independence of judiciary causes over the citizens' freedom to criticize and vice versa while analysing the affect of media trials and the ambiguity of the contempt laws.

I. INTRODUCTION

The Contempt of Court is viewed as a threat to the fundamental right of freedom of speech. In 2020, this subject weathered a storm in the entire country, while also putting the judiciary and its independence on a media trial. While the people and counsels took the view that every citizen should have the right to criticise all organs and representatives of the organ, the court expressed its concern that even though the people have the freedom of speech, it still isn't an absolute right and is subject to reasonable restrictions especially when such speech leads to diminishing confidence of the citizens in the judiciary.

The need to understand the so called reasonable restrictions along with the deteriorating affect of media trial on administration of justice is imperative. The matter was dealt with expertise, with reputed personnel on both ends defending their rights and liabilities. The case comment is an attempt to cover the matter with an aerial view that strikes a balance which is paramount to the democratic entity and does not end as a one sided hollow commentary.

II. BACKGROUND

On 22nd July 2020 the court registered a Suo moto contempt proceeding against reputed Ld. Senior Counsel Mr. Prashant Bhushan and Twitter Inc. based on the two tweets published by

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him on 22nd June,2020 and 27th June,2020 that were made against the CJI and the Supreme court along with the last four retired CJIs respectively. The publication as per the court were capable of interfering in the administration of justice as it would lead to citizens lack of faith in the judicial system and further scandalises the court.

III. RULE OF LAW

The said matter is an issue discussing two factors, the independence of judiciary and the Fundamental Right to Freedom of Speech and Expression of the citizens. It shall be noted the averments made by the counsels on behalf of the contemnor are backed by Part III of the Indian constitution under **Article 19(1)(a)**, however it is equally significant to note that the constitution also has rendered the High Court and Supreme Court the “*power to punish for the contempt of itself*” under **Article 215 and 129** respectively. Such contempt is to be read with Criminal contempt of Court that is defined under **Section 2(c)** of The Contempt of Courts Act, 1971 that necessitates, a publication either written, spoken or visually represented entails contempt if it leads to; scandalisation of the court, prejudice in judicial proceeding, and obstruction of administration of justice.

IV. ISSUE

The Apex Court in this matter has analysed; Whether the Freedom of Speech and Expression practiced by the contemnor had amounted to contempt and is ‘threat to the independence of judiciary’ or whether it is a ‘fair criticism’ ?

V. ANALYSIS

It is pivotal to assess the arguments of both sides in order to scrutinize the matter. During the proceedings, the contemnor and his counsels had raised several arguments on the lines of vagueness and ambiguity under the act, with respect to the phrase ‘scandalising the court’ and proceeded to submit that Section 13 of the Contempt of Courts Act allows truth as a defence to contempt. The counsel elucidated that checks and balances and freedom of speech is essential for democracy and the citizens should have the right to criticize. The court took a bird eye and analysed the situation at hand keeping in mind the freedom of expression that includes right to criticism, along with the substantive provisions given under the contempt act.

The court opined that any publication that lowers the authority of the court and interferes with due course of justice is said to scandalise the court. Further, the court pondered on the subject of criticism of the judiciary and determined the seriousness of the allegations as well defence of truth. It reasoned that even though freedom of speech is a fundamental right and all citizens

have the right to criticise the organs of the state, nevertheless there is a distinction between fairly criticising the conduct and judgement of the court and directing such criticism to the personal character of the judge.

The court's judgement is often put to media and public trial during and post pendency of the matter that pressurises the court, yet it does not influence the course of the proceedings, but personal criticism towards the officer of the court is bound to affect the decision of the court as it imposes an external pressure and a fear of outrage in the mind of the unbiased judge. While it is the right of a person to express their opinions and belief on the judgement of the institution, the tweets are a direct criticism of the CJIs and the institution itself. The court further appropriated that the exercise of contempt is not to impose sanctions for non-repetition, rather the jurisdiction is exercised to ensure administration of justice for upkeep of public confidence with respect to honesty and impartiality of the institution. Ultimately due to the contemnors' disapproval to the advice of attorney general with respect to withdrawal of statements and furnishing of an apology, the court decided that not holding the contemnor liable for his contempt would indicate right to freedom of speech as an absolute right and it could be used as an absolute defence to undermine the extent of contempt in the future. Hence, it was rationed that though constructive and fair criticism is welcome, nevertheless scandalous and unreasonable allegations shall have consequences. Therefore, the court while considering the service of Mr. Prashant Bhushan showed magnanimity and imposed a fine of Re.1/-.

VI. CRITICISM

" Judges should not silence criticism with threat of Contempt of Court but should remove the weakness and drawback that crept into the judicial system." - Justice HR Khanna

The judgement as well as the action of the court of taking *suo moto* cognizance was nationally criticised. The legal practitioners, academicians and media journalists raised the concern as to whether the judiciary was abusing its power and independence in order to set a precedent to avoid senior counsels from criticising the court and its order in public. The pressing concern addressed by most was *"how is criticising a judge threat to the court?"*. In further discussions, the process was condemned and people took view that the judges who were addressed in the tweets were free to file a suit against the contemnor for defamation, which in an ordinary scenario was the ideal remedy for such an action.

VII. CONCLUSION

In India, the issue of freedom of speech and the impositions of reasonable restrictions has been

a controversial subject since the independence. Taking into account the vilification of the judiciary on a national level and the need for its independence as well as the confidence that the organ needs to maintain among the citizens, I believe the decision of the court appropriately determines the extent of freedom of speech while bearing in mind the independence of judiciary. It saves both the essentials of the democracy. Even though the judgement seems like a controversial one and a restriction on rights of the citizen, if the decision is read as a whole instead in part it is a functional and an extremely reasonable judgement considering that the role of the court is merely a mindful interpretation of law. Further bearing in mind that an ordinary citizen as well as professional like Prashant Bhushan and Ld.Counsel Dave have a forum to analyse and comment on a situation, but the Judges Code of Conduct does not allow them to discuss the same on media forums, hence with lack of authority to defend their ideology has to be depicted in the judgement itself and not beyond the judgement. Therefore, protection of independence of judiciary is equally important as a citizens' right to freedom of speech.

The Constitution of India under Article-47 mandates the Central and State governments to raise the standard of living of their citizens. It also guarantees its citizens under Article-19(1)(c) to form associations or unions to represent their grievances or demands the implementation of welfare schemes. This paper envisions the non-implementation of the international labour standards and the recommendations of the TFDW. The usage of obsolete legislation to find a solution to existing problems is not a solution at all. The Government of India must come forward with specific statutes and policies with the *Principle of Accommodation* to prevent the exploitation of domestic workers.
