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Free Speech & Contempt of Court: Where to Draw the Line?

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ABSTRACT

The spirit of Indian Democracy is founded on the basic fundamental rights enshrined in its Constitution and the fundamental right which runs the wheels of democracy, it the Right to Free Speech.

This very right, like every fundamental right comes with a reasonable restriction and responsibility. However, the right to free speech is purportedly terrorized by the action of criminal contempt. The law of Contempt of Court is an archaic law, which is vague and lacks due procedure. More than a reasonable restriction, it is being used as weapon to threaten those who voice and revolt against the judiciary in particular or any organ of the government in general.

The line between free speech and contempt of court is very thin, and both i.e the public at large and the judiciary must not jump this line and must within the ambit of this line so as to not stifle and stumble upon one another.

The changing times, demand, that people must voice their opinions and the Judiciary must refrain from reacting to such revolts, since the role of judiciary is much more important and higher than any revolt. It must not use the weapon of contempt to stragulate the voices of the public at large.

In my opinion, fair criticism is a must and to run the democracy smoothly, people need to voice their opinions and expressions freely, without any fear anyhow whatsoever. Moreover, criminal contempt is too dangerous for the democracy, because if it is motivated and encouraged, in no time it will kill the very spirit of democracy and turn this country into an autocratic state.

In conclusion, it is pertinent to state that, in an era, in which social medias are full of critics, commenters and observers who deem it necessary to air their views in many unrestrained and uninhibited ways, the higher judiciary should not really be spending its time and energy invoking its powers to punish for contempt of itself.

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To India, is one of the biggest democracies in the world. It is the country “of the people, by the people and for the people”. The very premises of democracy is built upon its people, their expressions, opinions and interests and anything which has the power to stifle this foundation will result in the death of democracy.

In order, to give flair and recognition to the spirit of democracy, the Indian Constitution has engraved in itself the Fundamental Rights, which precisely are the wheels of democracy.

One of the very crucial and significant of the Fundamental Rights is bestowed upon the people in form of Article 19 (1), which has given birth to the Fundamental Right of Freedom of Speech & Expression. Free speech is without a doubt a fundamental block of a functioning democracy. The fundamental freedoms are not necessarily and in all circumstances mutually supportive, although taken together they weave a fabric of a free and equal democratic society.²

Freedom of speech and expression has four broad social purpose to serve:

- i) It helps an individual to attain self-fulfilment
- ii) It assists in discovery of truth
- iii) It strengthens the capacity of an individual in participating in decision-making, and
- iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

Liberty of free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary.³ This is the very place where our Constitution has imposed reasonable restrictions upon the Fundamental Rights.

The right to freedom of speech also includes the right to fairly criticise in good faith but this right is intimidated when a person is charged under criminal contempt of court as provided under the Contempt of Court’s Act. **Holmes J.** observed that, “*the right to speech and expression as the lifeblood of democracy that includes the right to fairly criticise in good faith*”. However, the right to free speech is **threatened** in case a person is charged with criminal contempt under the court’s inherent power or through the 1971 Act.

In my opinion, contempt of court is one such weapon which has the power to crush the spirit of democracy in its entirety. Before, we jump to any conclusion; it is pertinent to understand

² AIR 1998 SC 1064, M.H. Devendrappa v. Karnataka State Small Industries Development Corpn.

³ (2003) 3 SCC 308, Narmada Bachao Andolan v. Union of India

what is contempt of court.

Contempt of Court is governed by the Contempt of Court's Act. Contempt is basically categorized as *Civil Contempt and Criminal Contempt*. The weapon that stifles and strangulates the spirit of free speech of a citizen in our country is criminal contempt. The jurisdiction of Contempt of court can sometimes be envisaged to be "very dangerous" because the Judge himself plays three roles of that of *an accuser, prosecutor and as a judge*.

The respect for the judiciary does not stand on the ability of the court to stifle this kind of criticism even when it is sometimes scurrilous and unfair. Former Justice of the Supreme Court of India, **V.R. Krishna Iyer J.**, famously termed the law of contempt as having "*a vague and wandering jurisdiction, with uncertain boundaries; contempt law, regardless of the public good, may unwittingly trample upon civil liberties.*"

It is the very duty of a responsible citizen to keep checks upon the three organs of the government and every dutiful citizen must criticise the government in good faith, so as to safeguard their rights and interests. Undoubtedly, no person shall voice such words so as to undermine or attack the very sanctity of the government, much less, must not voice words which may shake the society's confidence upon the government.

There is a very thin line between free speech and contempt- it is a line like the "Lakshman Rekha", and it is crucial that both, the people as well as the government work within four corners of this thin line. Either shall and must not surpass or bypass this line, so as to stumble upon one other.

However, looking to current scenario and the various facets of revolution, the government is trying to supersede this line and trying to monopolise and threaten those who tend to voice against it and it can undoubtedly be said that, contempt is one such weapon used by the judiciary to strong-arm the public at large in order to refrain them from voicing against it freely, thereby, clinching and strangulating their basic fundamental right to free speech.

Now, the world is moving into the era of ardent digitalization, people have taken recourse to social media to voice their opinions and expressions. It is the only platform where the voice can be heard by society at large together. Criminal Contempt, is not a solution to curtail free speech, rather it is a weapon used to terrorize free speech. The government, be it, Legislature, Executive or the Judiciary, must agree to disagree with its people and accept fair criticism with an open mind.

People are aware that every right comes with an equal responsibility. It is evident from the Indian history, that, people have raised grave questions and voices against the government

only when the government has been acting against their welfare and interests and when their acts have had destructing and devastating effect on the very foundation of the Constitution.

In a constitutional democracy, the rule of law necessitates that law is above the three organs of the government. The acts of the executive are accountable to the citizens, the laws made by the legislature are within the ambit of judicial review of the courts, and the judicial organ is held accountable through public criticism. If the judicial organ is not subjected to public criticism, then it would be nothing less than a “*Command of the Sovereign.*” **This is primarily because of the Court’s unusual type of contempt jurisdiction that combines “the jury, the judge and the hangman.”**

It is crucial to be cautious against the criminalization of speech as it is counter-effective and the threat of harsh sanctions exerts a significant *chilling effect on Article 19* of the Constitution. India’s subjective approach discredits the very idea of accountability. Judges should not silence criticism with threat of contempt of court but should remove the weakness and drawback that crept into the judicial system. Administration of justice and upholding the majesty of law is undoubtedly a herculean task but not a cloistered virtue.

In the recent years, the Indian authorities have increasingly used criminal laws, including for counterterrorism, sedition, and criminal defamation, against peaceful dissenters, journalists, rights activists, academics and students. Scores of people have been arbitrarily arrested, prosecuted and imprisoned in politically motivated cases. The contempt verdict against Adv. Prashant Bhushan could signal to India’s courts that criticism of the Judiciary could be subject to criminal action and it is a perfect example to ascertain where the Judiciary has surpassed that thin-line (Laxman Rekha) and indeed have used the law of contempt to threaten and shut mouth of those, who attempt to revolt against it. At a time when the space for peaceful dissent in India is fast shrinking, the Supreme Court is sending absolutely the wrong message about the importance of holding democratic institutions in a free society accountable.

That, since, judicial independence does not render a judge free from public accountability, and legitimate public criticism of judicial performance, is a means of ensuring accountability subject to law, a judge should generally avoid the use of the criminal law and contempt proceedings to restrict such criticism of the courts. Like all public figures, judges too are legitimately subject to criticism, but even if they consider it unfair, it should not be treated as an attempt to undermine the judiciary. Ultimately, the judiciary is strengthened by heightened scrutiny, and judges should take the lead to counter any attempt to silence critics. Eventually,

Contempt law is an archaic law. The punishment for contempt could procure submission but not respect for the judicial institution and the higher judiciary should not really be spending its time and energy invoking its powers to punish for contempt of itself.

CONCLUSION

In respect of this article, there is a two-fold conclusion:

- ✓ Firstly, Freedom of speech comes with restrictions and contempt is one of them. One can question that these restrictions mentioned in Article 19 under clause 2-6 are so extensive that it limits clause 1 itself, but they were included with a sole aim to maintain the balance of the constitutional machinery because too much power can prove to be dangerous at times.
- ✓ Secondly, Both the Public and Judiciary must understand the very thin-line between Free speech and Contempt before attacking and vulcanizing one another. Criminal Contempt must be abolished, since; it is vague and does not prescribe any procedure to deal with the same. Focus should be given precedence over “dignity of court”.
