

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 7 | Issue 1

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2024

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# Freedom of Speech vis à vis Contempt of Court: An Analysis

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## ABSTRACT

*Right to speech and expression is fundamental right which guaranteed to every citizen of the country so that every citizen can speak fearlessly on objectionable issues. Everyone has a freedom to criticise those things which are morally and legally wrong. The contempt of court Act, respects the right to speech and right of justice. Contempt law should be practiced only when someone attempted to lower the dignity of judiciary with mala-fide intention. Freedom of speech and judiciary are two important pillars of our constitution so it is very important to maintain a balance between the two.*

**Keywords:** freedom, speech, contempt.

## I. INTRODUCTION

Justice Patanjali Shastri has stated that the freedom of speech and of press is the foundation of all democratic organisations because without free political discussion no public education is possible.<sup>2</sup> Freedom of speech and expression includes the right of every citizen to criticize the court, the judiciary as an institution and its functioning. The courts to maintain their independence use the power of contempt to punish one who lowers the dignity of the court or interferes with administration of justice. This precisely is the conflict between Freedom of speech and expression and contempt of court. Both freedom of speech and power of contempt are vital for a democratic setup. Both are for the benefit of the public. Freedom of speech and freedom of press ensure judicial accountability whereas power of contempt ensures fair administration of justice.<sup>3</sup>

## II. SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

India's freedom struggle there was a persistent demand for a written Bill of Rights for the people of India which included guarantee of free speech. Understandably, the Founding Fathers of the Indian Constitution attached great importance to freedom of speech and expression. In their hearts and minds was imprinted the message of Mahatma Gandhi, that

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<sup>2</sup> B.K.Sharma, *Introduction to the Constitution of India* at 87 (2007).

<sup>3</sup> Freedom of Speech Vis-A-Vis Contempt of Court at 270. Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/129442/10/10\\_chapter%205.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/129442/10/10_chapter%205.pdf) ( accessed on May 10, 2020).

evolution of democracy is not possible if one is not prepared to hear the other side.

Article 19(1)(a)<sup>4</sup> of the Indian Constitution guarantees to all its citizens the right to freedom of speech and expression.<sup>5</sup> The law states that, “all citizens shall have the right to freedom of speech and expression”. The freedom of speech and expression includes the right to express one’s views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc. It thus includes the freedom of communication and the right to propagate or publish opinion. But this right is subject to reasonable restrictions<sup>6</sup> being imposed under Article 19(2). Free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary.<sup>7</sup> Hence, as per Article 19 of the Indian Constitution, freedom of speech and expression was subject to the law which imposed reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.<sup>8</sup>

The Apex Court in *Union of India v. Navin Jindal*,<sup>9</sup> held that a person may write or say what he pleases so long as he does not infringe any law or the right of others. The freedom unlike an infringed right is subject to statutory curtailment and may be restricted by judicial development of law.

### III. FREEDOM OF SPEECH AND EXPRESSION INCLUDES FREEDOM OF PRESS

Media is the most powerful platform to express right of speech and expression under our Constitution. Press plays a key role in the success of a democracy. The right to communicate therefore included right to communicate through media and that was the reason freedom of speech and expression included freedom of the press. The press plays a vital part in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board. Any misconduct in a trial is sure to receive notice in the press and subsequently condemnation by public opinion. It is itself liable to make mistakes.<sup>10</sup>

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<sup>4</sup> Article 19(1)(a) of the Indian Constitution.

<sup>5</sup> T. C. A. Srinivasavaradan, *Federal Concept: The Indian Experience at 137 (1992)*.

<sup>6</sup> Article 19(2) in The Constitution Of India: Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

<sup>7</sup> Tanu Priya, “Freedom of Speech and Expression” Available at: <https://www.lawctopus.com/academike/freedom-of-speech-and-expression/> (accessed on May 7, (2020).

<sup>8</sup> H. Suresh, *All Human Rights are Fundamental Rights* at 34 (2000).

<sup>9</sup> AIR 2004 SC 1559.

<sup>10</sup> Joseph Minattur, *Freedom of The Press in India- Constitutional provisions And Their Application* at 78 (2012).

### **(A) Conflict Between Freedom of Speech and Contempt Power of the Court**

The freedom of speech and the independence of the judiciary bestowed under the constitution are two essential and most important pillars of democracy. Reconciling these two competing public interest issues and maintaining a balance, presents a huge challenge to any given democratic set-up. Healthy and constructive criticisms are the necessary feature for the development of the democracy. The Apex court being considered as the guardian of the Constitution, must vigilantly protect free speech even against judicial dissatisfaction.<sup>11</sup>

The press and the judiciary have a complex relationship: on the one hand, justice must be seen to be done, and the press is crucial in providing details of proceedings and ensuring that justice is administered. Both of these agencies should perform their duties fairly and judiciously. Right to speech does not give the press right to lower the dignity of court. Contempt of court (whether civil or criminal) thereby forms one of the restrictions on Article 19(1)(g), and reasonable means of countering it can be found in the Constitution itself and in other legislation like The Contempt of Courts Act, 1971.

The law of contempt is aimed at for keeping the administration of justice pure and undefiled while the dignity of the court is to be maintained at all costs, the contempt jurisdiction which is of special nature should be sparingly used. Judges do not have any general immunity from criticism of their judicial conduct, provided that it is made in good faith and is a genuine criticism, and not any attempt to impair the administration of justice.<sup>12</sup>

In *Re Arundhati Roy*<sup>13</sup> the Supreme Court followed the view taken in the American Supreme Court (Frankfurter, J.) in *Penne Kamp v. Florida*,<sup>14</sup> in which United States Supreme Court observed: “If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise<sup>15</sup>.”

The provisions of Article 19(1) ( a) of the Constitution of India are to be read with Articles

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<sup>11</sup> G.V Mahesh Nath, “Contempt of Court and Free Expression - Need for a Delicate Balance”, Available at: [www.Works.bepress.com](http://www.Works.bepress.com) (accessed on April 22, 2014).

<sup>12</sup> Rajeesh A.P, “Contempt of Court”, Phd Thesis, Mahatma Gandhi University, Kottayam, Kerala, India(2012). Available at: [http://www.mgutheses.in/page/titles\\_view.php?q=T%202281&word=C](http://www.mgutheses.in/page/titles_view.php?q=T%202281&word=C) (accessed on May 7, 2020).

<sup>13</sup> (2002) 3 SCC 343.

<sup>14</sup> US 331 : 90 L Ed 1295 (1946).

<sup>15</sup> Rajeesh A.P, “Contempt of Court”, Phd Thesis, Mahatma Gandhi University, Kottayam, Kerala, India(2012). Available at: [http://www.mgutheses.in/page/titles\\_view.php?q=T%202281&word=C](http://www.mgutheses.in/page/titles_view.php?q=T%202281&word=C) (accessed on May 7, 2020).

129<sup>16</sup> and 215<sup>17</sup> which specially grants the power to punish for contempt of higher courts. Article 19(1) (a) guarantees freedom of speech and expression and makes an exception in respect of contempt of court.<sup>18</sup> Freedom of speech and expression would always prevail except where contempt is manifested or substantial. Freedom of speech cannot go beyond condoning a case of real contempt of court.<sup>19</sup>

The Fundamental Right to Freedom of speech and Expression is a constitutional right for citizen of India under Article 19(1) (a) of the Constitution of India. This fundamental right of freedom of speech and expression is the foundation of all democratic institution and organizations. It is a settled fact that where there is a conflict between the voice of the people and that of the legislative, the former is to be preferred to latter.

In the Case of *P.N. Duda v P.Shivshankar*<sup>20</sup> the court observed that reasonable and fair criticism of the judicial system and Judges, not interfering with administration of justice and not bringing the administration of justice into disrepute, does not constitute criminal contempt. In this case the Apex Court was considering whether the speech made by the law minister was contemptuous and as such, any action should be initiated against him under the provisions of the Contempt of Courts Act..<sup>21</sup>

In the case of *Rakesh Kaul v. Registrar, J & K High Court*,<sup>22</sup> the Supreme Court stated that contempt was essentially a matter for the court concerned, in order that the majority of the law could be upheld, and in case of interference the Court must hold a strong view of the matter.<sup>23</sup>

#### IV. CONTEMPT LAW: A THREAT TO FREEDOM OF SPEECH

Freedom of speech is the anti-thesis of contempt of court. Contempt power is a brahmastra where the judge acts as complainant, prosecutor and judge all rolled into one. The Indian judiciary sometimes prevents the media from reporting trials in open court which is impossible in democracies. The law states that contempt should rarely be used to silence all critics because

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<sup>16</sup> Article 129 of the Constitution of India

<sup>17</sup> Article 215 in The Constitution of India

<sup>18</sup> *EMS Namboodripad v. T.N. Nambiar*, AIR 1970 SC 2015.

<sup>19</sup> *Subhash Chand v. S.M. Aggrawal*, 1984 Cr.L.J 481 Delhi.

<sup>20</sup> *P.N Dudda v. P Shivshankar* (1998 (3) SCC 167).

<sup>21</sup> Available at: [https://www.khuranaandkhurana.com/2020/04/06/contempt-laws-in-india-brief-study/\(accessed on May 10, 2020\).](https://www.khuranaandkhurana.com/2020/04/06/contempt-laws-in-india-brief-study/(accessed on May 10, 2020).)

<sup>22</sup> (1994)5 SCC 759.

<sup>23</sup> In that case a writ petition was filed before the High Court by student against the change in examination dates. The Assistant Controller of examination appeared in person and obtained an adjournment for two days. Later on the petitioners manhandled the Assistant Controller outside the court room. The High Court took the view that the conduct of the petitioners prima facie amounted to covering the authorities into submission and obstructing admission of justice and issued the rule. The petitioners went to the Supreme Court and submitted that since the incidence took place outside the court room no contempt was committed. The Supreme Court directed the students to appear before the High Court and tender unconditional apology.

the majesty of the courts does not take notice of trifles. It is no doubt true that reckless activists make even more reckless allegations against sitting judges who cannot defend themselves. However, it has been reiterated that the contempt weapon is not meant to uphold the dignity of individual judges but to ensure the people do not lose faith in the judiciary.<sup>24</sup> Justice Markandey Katju, give his opinion on freedom of speech in a case in which a bench of the Indian Supreme Court convicted a Kerala ex-MLA for contempt of court for calling some judges fools, and sentenced him to four weeks imprisonment. He said that in his opinion this judgment is incorrect, totally unacceptable in a democracy, and violates the freedom of speech guaranteed by Article 19(1)(a) of the Constitution of India. Further justice Katju said that let me say at once that we will never use this jurisdiction to uphold our own dignity. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. It is no less than freedom of speech itself.<sup>25</sup>

It is settled law that contempt jurisdiction is discretionary jurisdiction. In other words, a judge is not bound to take action even if contempt of court has indeed been committed. In *P.N. Duda v. V. P. Shiv Shankar & Others*,<sup>26</sup> a Union cabinet minister had said that the Supreme Court sympathised with zamindars and bank magnates. He further said FERA violators, bride burners, and a whole horde of reactionaries have found their haven in the Supreme Court and that Supreme Court judges have unconcealed sympathy for haves. A contempt of court petition was filed against the minister but no action was taken by the Supreme Court. But in the case *E. M. Sankaran Namboodiripad v. T. Narayanan Nambiar*, former chief minister of Kerala, was convicted for contempt of court for saying that courts were biased in favour of the rich, which is practically the same thing that was said by the Union minister in Duda's case. It shows that there is uncertainty in contempt law.

Indian courts have quoted with approval the observations of Lord Atkin in *Andre Paul Terrence Ambard v. Attorney-General of Trinidad and Tobago*,<sup>27</sup> that no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public, the public act done in the seat of justice. The path of criticism is a public way; the wrong headed are permitted to err there in: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely

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<sup>24</sup> Olav Albuquerque, "Free speech vs contempt of court", Available at: <https://www.freepressjournal.in/analysis/free-speech-vs-contempt-of-court> (accessed on May 6,2020).

<sup>25</sup> Markandey Katju, "contempt law threatens freedom of speech", Available at: [https://economictimes.indiatimes.com/news/politics-and-nation/contempt-law-threatens-freedom-of-speech-markandey-\(](https://economictimes.indiatimes.com/news/politics-and-nation/contempt-law-threatens-freedom-of-speech-markandey-() accessed on May 12, 2020).

<sup>26</sup> 1988 SCR (3) 547.

<sup>27</sup> AIR 1936 PC 141.

exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : he must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.<sup>28</sup>

### **(A) Dividing line between Criticism and Contempt**

The principal test applied by courts in India while deciding matters of criminal contempt is the test of erosion of public confidence. The courts have emphasised the distinction between an attack on an individual judge which may be tantamount merely to libel on the judge and contempt of court. While the former may be a wrong done to the judge personally, the latter seeks to interfere with and denigrate the course of justice and is a wrong done to the public.<sup>29</sup>

In *D.C. Saxena v. Hon'ble Chief Justice of India*,<sup>30</sup> this distinction between contempt and criticism became blurred as the Supreme Court held that libel against a judge can constitute criminal contempt if the imputation is of such gravity that it erodes public confidence in the system. The court held that any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander.

The Apex Court in *Rajendra Sail v. M.P. High Court Bar Association*,<sup>31</sup> held that criticism must always be dignified and that motives must never be attributed: The judgments of courts are public documents and can be commented upon, analysed and criticised, but in a dignified manner without attributing motives. Before publishing, whether on print or electronic media all concerned have to see whether any such criticism has crossed the limits as aforesaid and if it has then resist every temptation to make it public. The test based on erosion of public confidence is by itself a flawed one. After all, it is natural that serious allegations made against an individual judge would undermine public confidence in the system.

Before 2006, neither truth nor good faith were defences against the law of contempt in India. In the circumstances, the test of erosion of public confidence has the effect of acting as a deterrent against genuine complaints made against an individual judge. Ironically, although Article 124(4) of the constitution provides for the removal of a judge for proved misbehaviour, no one could offer proof of such misbehaviour without risking being sent to jail for contempt of court. This provision is now rectified by an amendment in the year 2006<sup>32</sup> to the Contempt of Courts

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<sup>28</sup> Rajeeesh A.P, “ Contempt of Court”, Phd Thesis, Mahatma Gandhi University, Kottayam, Kerala, India(2012). Available at: [http://www.mgutheses.in/page/titles\\_view.php?q=T%202281&word=C](http://www.mgutheses.in/page/titles_view.php?q=T%202281&word=C) ( accessed on May 7, 2020).

<sup>29</sup> Freedom of Speech Vis -A-Vis Contempt of Court at 270. Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/129442/10/10\\_chapter%205.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/129442/10/10_chapter%205.pdf) ( accessed on May 10, 2020).

<sup>30</sup> (1996) 5 SCC 216.

<sup>31</sup> (2005) 6 SCC 109.

<sup>32</sup> Section 13 of the Contempt of Courts Act, 1971:

Contempts not punishable in certain cases.-Notwithstanding anything contained in any law for the time being in

Act, 1971 which makes truth a valid defence to a charge of contempt.<sup>33</sup>

## V. CONCLUSION

After analysing the constitutional and statutory provisions regarding freedom of speech and contempt of court it can be concluded that both are essential part of a person's life. Freedom of speech and expression makes a person's thinking broad but such freedom should be exercised in a dignified manner. Freedom of speech does not allow to contempt the court. To secure the existence of both the institutions it is necessary to maintain the balance between the two.

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force,- (a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice; (b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

<sup>33</sup> Freedom of Speech Vis -A-Vis Contempt of Court at 270. Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/129442/10/10\\_chapter%205.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/129442/10/10_chapter%205.pdf) ( accessed on May 10, 2020).