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With this thought, we hereby present to you

LawPublicus The Legal Portal

Free Speech and **Contempt of Court:** **Where to Draw the** **Line**

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Free Speech and Contempt of Court: Where to Draw the Line

By: Hardik Maurya

INTRODUCTION

What is freedom of speech and expression? What does freedom of speech and expression mean in a diverse country like India? Many times we use this freedom of speech and expression as a bulwark in our daily lives. Article 19(1)(a) of the Indian Constitution provides that all citizens have the right to freedom of speech and expression. This means that an individual under this article has the right to express his/her own perspectives and opinions and convictions either verbally or in writing, printing (the cartoon and artistic representations) or through any other methods. However, on many instances it has been observed that the individuals think this right to freedom of speech has no boundaries and is limitless and can speak anything they want to. There have been instances where cartoonists such as Richa Taneja had gotten arrested for printing cartoons which were derogatory/disrespectful towards the judiciary or even the legislature. It does mean the right to say whatever, whenever and wherever one likes. Therefore, the difference between clause (a) and other clauses of Article 19 is that the other clauses give the right to do something but clause (a) gives the right to freedom to do something. It is a protector of a healthy, progressive and a democratic society.

However, this right is not absolute. The right to freedom of speech is subject to certain reasonable restrictions which are imposed by the Government of India. The freedom of speech and expression does not bestow an absolute right to speak or publish without any responsibility, whatever one may choose, or an unquenchable license that gives immunity for every possible use of language and does not prevent punishments for those who take advantage of this freedom. It enables the legislature to impose reasonable restrictions on the right to free speech and expression. The restrictions that might be put on right to free speech and expression are in the interests of integrity of the country, security of the state, friendly relations with foreign countries, public order or decency or morality or with respect to defamation, contempt of court and incitement to an offence. Although the constitution does not define the expression “reasonable restrictions”. Nor can a pattern of reasonableness be laid down for all cases and situations, as it varies accordingly.

WHAT IS CONTEMPT OF COURT?

Basically, contempt of court means the offence of being disrespectful to or disobedient towards the court of law and/or its officers. The disobedience can either be in the form of defying the authority, justice and dignity of the hon'ble court of law.

The concept of contempt of court is a few centuries old. In England, it is a common law principle which seeks to protect the judicial power of the king, initially exercised by him, and later by a panel of judges who acted in his name. During those times, violation of the orders given by the judge was considered as an insult to the king himself.

The concept of contempt is not only restricted to courts, it also extends to the Parliament. Any act which appears to be impudent towards the court of law or any of its officers, in terms of behaviour opposing the authority or dignity of the court, amounts to contempt of court.

The freedom of expression which is guaranteed under the Indian constitution and the independence of judiciary are the two most fundamental and important constituents in a democracy. Productive criticism is the major ingredient in the development of democracy and the courts should work to protect free speech. The main question which rises here is that during such criticism where to draw the line? Making assertions against the judiciary or targeting any particular judge or attributing any motives to judgement and/or any derogatory attack on the conduct of judges etc. are considered as matters which affront the judiciary. In short, the necessary ingredients which constitute contempt of court are, firstly, scandalizing the court of law, secondly, interference in the administration of justice and lastly, interfering with the due course of justice. Therefore, for any such acts, the court of law has the power to punish any person under the Contempt of Courts Act, 1971.

Section 5 of this Act provides that fair criticism cannot be termed as contempt of court. However, the causticity of the situation is that when it is the judiciary against whom the allegations have been made, then it alone has the power to decide whether the criticism was productive or fair in nature or not.

What does not constitute contempt of court is the honest reporting of judicial proceedings and the fair criticism meted out to a judicial order after the case has been heard and disposed of. In the case of *PN Dua v Shiv Shankar and others*, the Supreme Court held that mere criticism of

the Court does not amount to contempt of Court. The Court observed that in a free marketplace of ideas, criticisms about the judicial system or Judges should be welcomed, so long as such criticisms do not hamper the administration of justice.¹

THE PRASHANT BHUSHAN CASE

The most recent case of contempt of court in India has been the Prashant Bhushan case in which the Supreme court, based on the complaint filed by Mahek Maheshwari, took suo moto cognizance against the Advocate on Record Mr. Prashant Bhushan for the tweets which were posted by him on his twitter handle for the current CJI, Sh. Sharad Arvind Bobde and for his interview in 2009 with the 'Tehelka' magazine in which he questioned the morality and righteousness of the past Chief Justices of the country. However, he clarified that he meant no disrespect for the office of the CJI and stated that he had bona fide intention to express that the democracy has been considerably destroyed in India, the Hon'ble Supreme Court failed to act as the custodian of the constitution and that the last four CJI's in particular have led to the destruction of democracy. Mr. Bhushan, although offered an apology for his tweet but refused to apologise for the interview he gave in 2009 to the 'Tehelka' magazine.

The contempt proceedings against Mr. Bhushan were initiated in July 2020 and in August 2020, the Hon'ble Supreme court held that Mr. Bhushan's comments were gnarled and held him guilty of the offence of criminal contempt of court. The court sentenced Mr. Bhushan with a fine of Re.1/- failing which he shall be under simple imprisonment for a period of three months and shall also be debarred from practising for a period of three years.

The other contender in this case was Twitter Inc., however, the court held that twitter was only an intermediary and does not have control of any sort on what content the user posts on his/her twitter handle. Moreover, the contemnor acted in a bona fide way and disabled the tweets in question. Therefore, the notice against Twitter Inc. was discharged.

¹ AVAILABLE AT:

<https://www.civildaily.com/burning-issue-contempt-of-court/#:~:text=When%20the%20Constitution%20was%20adopted,power%20on%20the%20High%20Courts.>

WHAT I THINK

According to me, Mr. Prashant Bhushan, being a citizen of India, was well within his fundamental right of speech and expression embodied in the Indian constitution under Article 19(1)(a). However, his tweets and comments included some statements which were considered to be unflattering/slanderous to the Chief Justice of India and other members of the judiciary. The contempt proceedings initiated against Mr. Bhushan were lawful and as per the established procedure. Although Mr. Bhushan had the right to free speech and expression but, he also had a liability as an officer of the court to remain within the boundaries of reasonable restrictions and honour the office of the Chief Justice of India.

Justice Hans Raj Khanna once observed that the judges should not silence the criticism with contempt but should work towards removing the weakness that has crept inside the judicial system. Administration of justice and upholding the grandeur of law is a gruelling task but not a cloistered virtue.

CONCLUSION

It is clearly noticeable that all the citizens of India are guaranteed the right to free speech and expression, contempt of court can serve as a reasonable restriction. Although, none of the fundamental rights guaranteed in the Indian constitution are plenary. The right to free speech and expression too is subject to certain restrictions and consists of grounds such as defamation, derogatory remarks made on the conduct of judges, public order, decency or inciting an offence. The main highlight of this is that a requirement that a restriction should be reasonable is of huge constitutional significance as it acts as a limitation on the power of legislature and therefore, widens the scope of judicial review of laws restraining the exercise of freedoms guaranteed by Article 19. The reasonable restrictions are included with the sole objective of maintaining the equilibrium as the makers of the Indian constitution knew very well that if they had to manifest absolute rights on the citizens then it would lead to the failure of constitutional machinery. Ultimately, the Indian constitution as we all know is a living document and has survived for many decades despite making various amendments and foiled attempts to weaken the spirit of the Indian constitution.

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