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Judicial Dignity Vs. Free Speech: Understanding Contempt Of Court In Article 19(2)

Author : Dr. T. Tripura Sundari, Professor, Department of Communication & Journalism, Sri Padmavati Mahila Visvavidyalayam (Women's University), Tirupati – 517502, Andhra, Pradesh

Abstract:

The paper explores the intricate balance between judicial dignity and free speech within the context of Article 19 (2) of the Indian Constitution, which provides for reasonable restrictions on the right to freedom of speech and expression. It reconnoiters into the legal and philosophical underpinnings of contempt of court, analyzing how this doctrine is employed to uphold the authority and respect of the judiciary while simultaneously scrutinizing its potential to infringe upon the fundamental right to free speech.

The treatise begins by outlining the historical evolution of contempt of court laws in India and their foundational objectives. It then examines key judicial pronouncements that have shaped the current legal landscape, highlighting the tensions and reconciliations between preserving judicial dignity and safeguarding free expression. Through a comparative analysis with international practices, the article identifies both the strengths and weaknesses of India's approach to contempt of court.

Further, it investigates specific case studies where the judiciary's invocation of contempt powers has sparked public debate and controversy. These instances are analyzed to illustrate the delicate balancing act required to maintain judicial authority without encroaching on democratic freedoms. The role of media, social media, and public opinion in influencing perceptions of contempt and judicial conduct is also explored.

The article concludes by proposing potential reforms and guidelines to better harmonize judicial dignity with free speech. It advocates for clearer definitions, procedural safeguards, and a more nuanced application of contempt laws to ensure they are not misused as tools of censorship or oppression. By doing so, the article aims to contribute to the ongoing dialogue on how democratic societies can uphold both robust judicial institutions and vibrant free speech.

Key Words: Freedom of Expression; Contempt of Court; Indian Constitution; Art. 19 (2); Judicial authority; Case Law

Introduction

No democracy is regarded worthy without an effective, efficient, impartial, independent judiciary. Whenever conflict arises between individual rights and social interests, it is the burden of the judiciary to resolve these conflicts. When judiciary has to perform such responsible tasks, it should be vested with the jurisdiction power such as 'Contempt of Court'. Thus, the ground of Contempt of Court has found a place in Art.19 (2) apparently to safeguard the independence and dignity of the judiciary and its due administration of justice. But the expression 'Contempt of Court' has not been defined either under Art.19 (2) or under Art.129, which confers powers to the Supreme Court of India to punish for contempt of itself.

But judiciary in England ***(Attorney General V. Times Newspapers, 1973)*** and USA ***(Bridges V. California, 1941)*** and India, had given a well-recognized meaning to the words "Contempt of Court". India originally followed the English Law of Contempt. But in 1971, the Contempt of Courts Act was passed which codified the law relating to contempt in India.

The Contempt of Court is classified in two categories namely Criminal Contempt and Civil Contempt. Art.19 (2) refers only to Criminal Contempt, as Civil Contempt has no connection with the freedom of speech and expression. 'Civil Contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. 'Criminal Contempt' means the publication (whether by words spoken or written, or by signs or by visible representations or otherwise) or any matter or the doing of any other act whatsoever, which – (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; (ii) prejudices, or interferes or tends to interfere with the due course of any judicial proceedings; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. As far as the press is concerned it is more involved in the criminal contempt rather than the civil contempt. Since 1950, Courts have dealt with the contempt of court cases involving the press in the context of the Constitutional guarantee of freedom of speech and expression. After independence, it was the first act to be passed by the Parliament over the contempt jurisdiction in 1952. The Contempt of Court Act 1952 did not change the nature of contempt jurisdiction, as it existed earlier. A Committee was set up with Justice Sanyal, the then Solicitor General to examine the law, which submitted its report in 1963. The Contempt of Court Act 1971 was passed to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereof. This Act is more exhaustive than that of 1952. The Contempt of Court Act 1971 thus codifies the law laid down in many judicial decisions by providing definitions of civil and criminal contempt. There are certain defenses provided under the Act. They include – innocent publication and distribution of matter; fair and accurate report of judicial proceeding; fair criticism of judicial act are not contempt; truth of the statement is no defense.

The Contempt of Court Act has become controversial and is regarded as an arbitrary law to have not been well discussed and well thought of in the Constituent Assembly. An amendment for Contempt of Court as exception in Clause (2) under Art.19 (1) came up only on the last day of the session. In the words of a member Sri B.Das "I wish my heart becomes pure and I respect the judges in India for their eminent position and for the due discharge of their duties……. If I have any personal view, I will oppose any tampering with any articles in the Fundamental Rights at this fag end of the session" (X CAD: 401). Thus, the freedom of expression has been limited to a great extent and nobody can be allowed to interfere with the due course of justice or to lower the prestige of or authority of the court ***(Namboodripad V. Narayan, 1970; C.K. Daphtry V. Gupta, 1971).*** Most of the newspaper cases involve the charge of scandalizing the Court. The scandalization may be of the Court as an institution or of the judge or judges. It would constitute contempt only if the scurrilous attack is made with reference to the administration of justice as was held by the Supreme Court in ***Baradakanta Mishra V. Chief Justice (1974)*****,** because the very concept of contempt of court is that public should be protected from any obstruction to public justice or the confidence of the public is undermined or impaired. It is the task of court to decide whether the vilification is of the judge as the judge or the judge as an individual. If it is the latter case, the judge would be left to his private remedies and he has no power to commit for contempt. This was decided in ***Baradakanta V. Registrar, 1974*****.** If the vilification is of the judge as a judge, it becomes a public mischief punishable for contempt if it substantially affects the administration of justice ***(Ram Dayal V. State of MP, 1978)*****.** The publication of a malicious statement against a judge transcends a personal wrong against him and becomes an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or tends to deter actual or prospective litigants from placing reliance upon the administration of justice or if it is likely to cause embarrassment in the mind of the judge in the discharge of his judicial duties ***(Perspective Publication V. State of Maharashtra, 1971)***. Once the writing is held as contempt it is immaterial whether the criticism of a judge relates to his functions as a judge in judicial capacity or in an administrative capacity or even in non-adjudicatory matters. It is important to note that the intention of the alleged contemnor is immaterial, what is relevant is its probable effect on the judges, parties, witnesses etc. in relation to the pending proceedings and not its actual effect. Further the truth of the facts alleged is no defense if the statement is likely to prejudice or interfere with the due course of justice. Another defense is innocent publication. Merely reporting an occurrence of a crime, or the fact that person has been arrested or charged with an offence does not constitute a case for the contempt of court. But it becomes contempt of court when it discusses the merits of a pending civil case ***(Saibal V. B.K.Sen, 1961)*****.**

The Indian judiciary has shown to some extent liberal attitude towards freedom of speech and expression than to restrict it, on the ground of Contempt of Court. This connection is reflected in ***Baradakanta Mishra V. Registrar of Orissa High Court (1974)***, where it was observed that the restrictions imposed on freedom of speech and expression in relation to Contempt of Court must be reasonable, unless there is real prejudice, which can be regarded as a substantial interference with the due course of justice. And the Courts also should not be too eager to exercise their power to suppress freedom of press. Chief Justice Chandrachud (1984) in this context gave a valuable discussion.

> "The right of free speech is important right of the citizen, the exercise of which is entitled to bring the infirmities from which the institution suffers including those administer justice. Bonafide criticism of any system or institution is aimed at inducing the administrators of that system to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism and that their functioning needs no improvement. But the liberty of free expression is not to be confounded with a license to make unfound allegations of conception against the judiciary".

But in most of the cases, judiciary has been very alert and sensitive in preserving the dignity and integrity of the judges, judicial officers and the courts. In ***Aswini Kumar Ghose v. Arabindo Bose (1953)***, the sensitivity of the Court in protecting its institution can be noticed. The case involved an article under the heading 'A disturbing decision' published by "Times of India" on 30th October, 1952. The article concluded that, "Politics and policies have no place in the pure region of the law; and courts of law would serve the country and the Constitution better by discarding all extraneous considerations and uncompromisingly observing divine detachment which is the glory of law and the guarantee of justice". But the Supreme Court was of the view that the article in question had a clear tendency to affect the dignity and prestige of this Court. Hence, in the name of 'tendency', it was prepared to restrain the freedom of expression when there was no substantial, clear and present danger to it. There is a thin line of difference between the libel and contempt and the courts can always interpret it as contempt because Contempt of Court Act is relatively wide in scope ***(Brahma P. Sharma V. State of UP, 1954)***. The line between comment, which scandalizes the judges and comment, which is legitimate criticism is not easy to draw; judges often use this jurisdiction to punish and answer their critics. The contempt jurisdiction is seen as a social device by which a 'westernized' status is given legitimacy in an Indian context. In ***R.C.Cooper V. Union of India (1970)***, the Supreme Court laid down the limits of criticism of the Supreme Court judgment. It stated that the Court, like any other institution, does not enjoy immunity from fair criticism. The Court further laid down the limits of criticism for the legislators. In ***E.M.S.Namboodripad V. T.N.Nambiar (1970)***, Court has been over sensitive to a purely academic and abstract criticism of the system of justice, there was no mention of any particular court, any judge or any pending matter, it was a criticism of the system of the judiciary in general. The Supreme Court held in this case that the matter has the tendency to obstruct the administration of justice, which amounts to Contempt of

Court. But the judiciary is not immune from public criticism when it is a part of the political system of a democratic country like ours. It is further observed in the cases ***Mulgaonkar (1978) and Shamlal (1978)*** that, the contempt power can put the judge in a position where he is virtually both the prosecutor and the judge and also puts the judge in the position where he himself virtually decides whether an attack on himself or his fellow judges is justified. In ***P.N.Duda V. P.Shiv Shankar and Others (1988)***, derogatory comments made by the then Law Minister in the meeting of the Bar Council of Hyderabad were published by the "News Times" paper. But the Court dismissed the petition with the contention that there is no imminent danger of interference with the administration of justice, nor of bringing administration into disrepute. This case evidentially brought an opinion that there is a definite and positive change in the attitude of judges after ***Mulgaonkar's case***. In ***Harijai Singh and another (1996)*****,** the Sunday Tribune, Chandigarh and the Punjab Kesari, Jalandhar in their articles published on 10th March 1996 stated that two sons of Senior Judge of the Supreme Court and two sons of the Chief Justice of India were also favored with the allotments of petrol outlets. After verification of records and affidavits, the Court found that the news items were patently false and held the editors, publishers and reporter guilty of Contempt of Court. The publications later expressed their unconditional apology. This case shows the carelessness on the part of the press and alertness and sensitivity on the part of judiciary to protect itself from false, baseless, distorted publications.

In a recent case of ***Arundati Roy V. RE (2002)***, it was held that the freedom of press is not guaranteed separately from freedom of expression and hence a person trying to scandalize the Court or undermine the dignity of the Supreme Court or High Court would attract Articles 129 and 215 of the Constitution of India. In ***Baldev Singh Gandhi V. State of Punjab (2002)***, it was held that fair criticism of law and executive actions by an elected member holding a statutory office may cover Art.19 (1)(a) of the Constitution of India. In ***Saroj Iyer V. Maharashtra Medical Council of Indian Medicine (2002)***, the Court held that the freedom of speech and expression includes the right to publish a faithful report or proceedings witnessed and heard in Court. Testifying on oath by a person in a Court before a judge becomes redundant if he/she is not allowed to resort to it for the purposes of defending oneself. Thus, truth as a defense to a charge of contempt must be allowed whereby the application of it is not to be left at the discretion of judges but is to be found on sound legislation. The National Commission to review the working of the Constitution (NCRWC) has even recommended the insertion of a provision, in Clause (2) of Art.19 of the Constitution on India, to permit the defense of justification of truth, to the charge of contempt. The English and the Australian Courts have accepted truth as a defense to a charge of contempt. The Contempt of Courts (Amendment) Bill 2003 seeks to achieve the aforesaid purpose.

These observations make it very clear that though contempt power is necessary for the preservation and for protection of individual rights, it should not be used to stifle the freedom of speech and expression. Both a free press and independent judiciary are important and indispensable to a free society; neither can have primacy over the other. Hence there is a need to revise the contempt jurisdiction. The American test of contempt jurisdiction i.e., 'clear' and 'present danger' can be adopted.

In ***Prashant Bhushan Case (2020)***, it was ruled that the tweets of Bhushan undermined the dignity and authority of the judiciary, thereby constituting contempt. Bhushan argued that his tweets were an exercise of his right to free speech under Article 19 (1) (a), but the court held that this right is subject to reasonable restrictions, including contempt of court. In ***Arundhati Roy Case (2016)***, the Author was held in contempt of court for an article she wrote criticizing the judiciary in relation to a case involving Dr. Saibaba. The Bombay High Court ruled that her statements scandalized the court and could potentially lower the authority of the judiciary. Roy contended that her article was protected under Article 19 (a) (a), but the court found that her statements crossed the line into contempt. In Rajat Sharma and Others Case (2019), the Supreme Court issued a notice of contempt to the editor of a news channel for airing content that allegedly maligned the judiciary. The petitioners argued that the broadcast was defamatory and affected the public's perception of the judiciary. The respondents claimed that the broadcast was an exercise of free speech under Article 19 (1) (a), but the Court emphasized that such freedoms are subject to the restriction of not committing contempt. ***In Shreya Singhal V. Union of India (2015)***, although primarily known for striking down Section 66A of the IT Act for violating free speech, the case also touched upon the issue of contempt. The court reiterated the importance of free speech while noting that it must be balanced with the need to respect judicial authority. This case underlined the delicate balance between Article 19(1)(a) and contempt of court. In Justice ***C.S.Karnan Case (2017)***, he was held in contempt for making public statements against fellow judges and the judiciary. The Supreme Court found his actions to be in contempt as they scandalized and lowered the authority of the judiciary. Karnan argued that his statements were protected under Article 19(1)(a), but the court held that judicial dignity and authority justified the contempt charges.

Conclusion:

Maintaining a delicate balance between judicial dignity and the fundamental right to free speech is essential for a healthy democracy. While it is crucial to uphold the authority and respect of the judiciary to ensure justice, it is equally important to protect the right to free speech, which forms the bedrock of democratic values. There is a pressing need for clearer definitions and guidelines regarding what constitutes contempt of court. Vague and broad definitions can lead to misuse and can act as a deterrent to legitimate criticism of the judiciary. Specific criteria and boundaries can help in distinguishing between constructive criticism and contemptuous statements. Implementing procedural safeguards is necessary to prevent the arbitrary use of

contempt powers. This includes ensuring fair trials for those accused of contempt and providing them with adequate opportunities to defend their statements as legitimate exercises of free speech. The role of media and public opinion in shaping perceptions of the judiciary and its functioning is significant. A robust and independent media acts as a watchdog and ensures transparency and accountability within the judiciary. Courts should recognize this role and avoid actions that may be perceived as stifling media freedom. Learning from international practices can provide valuable insights into managing the balance between judicial dignity and free speech. Countries with mature democracies often have well-defined laws and practices that respect both judicial authority and free expression. India can adopt and adapt such practices to its unique socio-legal context.

By addressing these aspects, the research paper aims to contribute to a nuanced understanding of how democratic societies can uphold robust judicial institutions while fostering a vibrant culture of free speech and expression.

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