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DRAWING THE LINE BETWEEN FREE SPEECH AND CONTEMPT

Mridull Thaplu¹ and Monalisa Nanda²

"For, to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the dignity and freedom of others."

– Nelson Mandela

Man, destined to spend away his banal life, withering down slowly, tries to make his existence bearable by what are popularly known as 'Political Rights'. The Right to Freedom of Expression, a manifestation of such Political Rights, glaringly stands out as the crown jewel of the modern civilization as it portrays the noble libertarian ideas emanating from the French Revolution. However, to measure the worth of human life on the basis of Rights alone, is hedonistic and thus, rights are enjoyed the best, when moderated by the 'Rule of Law', i.e, the principle that dictates that the law of the land is supreme and applies to all its citizens in a non-arbitrary and universal manner.

Such philosophy of providing Civil Rights, albeit with checks and balances, is enshrined within the Indian Constitution, Article 19(1)(a) of which, states that, "*All citizens shall have the right to freedom of speech and expression*"³. The roots of this Article, can be traced to the Preamble of the Constitution which accentuates the idea of liberty of thought and expression being available to all individuals. However, under Article 19(2) of the Indian Constitution, the State has the sovereign authority to impose reasonable restrictions on free speech in the acts which are done against the interest of sovereignty and integrity of India, security

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³ The Constitution of India, 1950, (India).

of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence⁴. The rationale behind the presence of such safeguards is the foresight of the founding fathers of the Indian constitution who believed that there needs to be a state of equilibrium between the powers of the people and the State, failing which, the nation shall inevitably descend into anarchy.

The Judiciary, also known as the interpreter of the constitution, has a special power of restriction of Free Speech, available to it, known as the 'Contempt of Court'. Contempt of court refers to the offence of showing disrespect towards the court of law or its officers and the Indian Constitution empowers both, the Supreme Court as well the High Courts to punish for the same, under Articles 129⁵ and 215⁶ while the statutory backing for the same is provided by the Contempt of Courts Act, 1971⁷, as per Section 2(c) of which, 'Criminal Contempt' takes place when the publication of any matter or the doing of any other act whatsoever scandalize⁸; interferes with the due course of any judicial proceeding⁹; interferes, the administration of justice in any other manner¹⁰;

The Hon'ble Supreme Court has time and again said that free speech doesn't mean unchecked freedom and that the judiciary as an institution has a certain level of sanctity which needs to be maintained as it is the very foundation upon which the grand old institution of democracy stands upon. However, it is naive and wrongful to believe that the power available to the Courts to hold citizens responsible for its contempt, is a transgression of the rights of the judiciary and that it

⁴ *Id.*, at art. 19(2).

⁵ *Supra* note 1, at art. 129.

⁶ *Id.*, at art. 215.

⁷ The Contempt of Courts Act, 1971, (India), Act No. 70 of 1971, Government of India.

⁸ *Id.*, at § 2(c)(1).

⁹ *Supra* note 5, at § 2(c)(2).

¹⁰ *Id.*, at § 2(c)(3).

makes it impervious to criticism, as, the law governing Contempt of Court, in itself provides certain caveats and exemptions. Section 5 of The Contempt of Courts Act, 1971 states that a person shall not be held liable for contempt for fair criticism¹¹. Moreover, an amendment was made to the Statute of 1971 in the year 2006 which amended Section 13 to include the defence of truth.

The stance of the Supreme Court upon treading the line between Freedom of Expression and dissonance against the judicial machinery, has been made crystal clear by the virtue of the judgments delivered in certain cases. The Supreme Court in the case of *Brahma Prakash Sharma v. State of UP*, held that: *“it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law”*¹² The court was of the opinion that a defamatory statement towards the Court of justice in itself shows that the Act of Contempt was committed and thus posed a rather strict stance against usage of strong words against the judiciary.

The Supreme Court in the case of *Baradakanta Mishra v. The Registrar of Orissa High Court* held that *“If the attack on the Judge functioning as a Judge substantially affects administration of justice it becomes a public mischief punishable for contempt. The court further added that a common form of contempt is the personal abuse of the judges”*¹³ The rigid stance of the Court in *Brahma Prakash Sharma* case seemed to have been watered down in this case and it was opined that, as far as the criticism of courts is concerned, the criticism needs to be done in a way which does not lower down the authority as well as obstructs the

¹¹ Supra note 5, at § 5.

¹² *Brahma Prakash Sharma v. State of UP* 1954 SCR 1169.

¹³ *Baradakanta Mishra v. The Registrar of Orissa High Court* 1974 AIR 710.

administration of justice provided by the court, this thin line of difference should be taken care off.

In the case for Contempt done by an Advocate the Hon'ble Supreme Court in *Pritam Pal v. High Court of Madhya Pradesh, Jabalpur*, held that “to preserve the proceedings of the Courts from the being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the Court, though painful, to punish the contemner in order to preserve its dignity.”¹⁴ This particular judgment presented a more philosophical and subjective approach to the issue of Contempt of Court and personal liberty, including, but not limited to Freedom of Expression, were held to be at equal footing with the sanctity of the judicial machinery.

The Indian way of adjudging a case of Contempt of Court is very different from its Western counterparts, in the sense that, in nations like the UK, USA, and Australia, the measurer of Contempt of Court is seen as a last resort and thus, every possibility is checked and every consequence is weighed thoroughly before a person is held liable for the same. In the Indian system, a mere disruption in the process of judicial administration of justice, qualifies as contempt, whereas, in the aforementioned nations, the merits of the act itself are checked and if such act is believed to be of benefit to the public, then the defendant isn't held liable. In the High Court of Australia's decision in *Hinch v. Attorney-General*¹⁵, it was suggested that “Australian judges must now engage in a balancing exercise: if the court is satisfied that, in publishing the material, the publisher sought to serve, and did serve, a public interest which outweighs the prejudicial effect of the publication, the publisher is not guilty of contempt.”¹⁶ Similarly, in the UK, there exists, the Bread Manufacturers principle, that tries to check the involvement

¹⁴ *Pritam Pal v. High Court of Madhya Pradesh, Jabalpur* 1992 AIR 904.

¹⁵ *Hinch v. Attorney General (Vic)* (1987) 164 C.L.R. 15.

¹⁶ Sally Walker, 'Freedom of Speech and Contempt of Court: The English and Australian Approaches Compared', 40 (3) 503-536 *ICLQ* 1991.

of the element of prejudice in a Contempt of Court trial. In *Ex parte Bread Manufacturers Ltd; re Truth and Sportsman Ltd*.¹⁷ Jordan CJ held that, “*where there is no intention to prejudice a fair trial, the rule that publication of material tending to prejudice a party in conducting litigation constitutes contempt is not invariable.*”¹⁸

It is no lie that the modern political era would not have seen the dawn, had it not been for liberal ideas that propounded free-will and self-interest and humanity would have been forever stuck in the dark ages where man was held chained up, ruled by dogmatic demagogues. With such realization, the institution of Civil Rights is raised to a pedestal of privilege, and thus, should not be taken for granted. In truly utilitarian sense, the greatest degree of freedom for the society as a whole can only be achieved when every individual utilizes his personal liberty within a said framework of ground rules and norms. Thus, the philosophy behind the existence of the idea of ‘Contempt of Court’, is deep-rooted within the human want for the epitome of social coalescence and public security.

¹⁷ *Ex parte Bread Manufacturers Ltd; re Truth and Sportsman Ltd* (1937) 37 S.R. (NSW) 2.

¹⁸ *Supra* note 14.