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# **INTERRELATION BETWEEN FREEDOM OF SPEECH & EXPRESSION AND CONTEMPT OF COURT.**

Authored By - Dipankar Kumar

## **ABSTRACT**

In India All citizens are guaranteed by the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution and whereas contempt is the one of the exceptions under Article 19(2) of the Indian constitution. limit people's ability to criticize the court's operation. contempt of the court is one of the appropriate limitations. Contempt is also categorized into civil contempt and criminal contempt is define under section 2(c) of the contempt of court Act 1971. the punishment for contempt of court shall be simple imprisonment for the term which may extend to six month or with fine it may extend to two thousand rupees or with the both. None of the fundamental rights under constitution of India guaranteed to Indian citizens are absolute. The right to freedom of speech and expression is also subject to other reasonable limitations such as defamation, decency and morality, public order and incitement to commit a crime.

There is conflict between the contempt of court and freedom of speech and expression but on other side both they are important equally set up for the democratic country because they are created for the benefit of the people. While judicial accountability is ensured by the freedom of speech and expression and the fair administration of the justice is guaranteed by the contempt of the court. In addition to safeguarding the dignity of the judge's contempt of court is also used to safeguard the administration of justice.

Keywords: - Indian constitution, contempt of court, Fundamental Right, free speech and expression.

## **INTRODUCTION**

The right to freedom of speech and expression is not an absolute right. there is certain restriction are given. The liberty granted to people to express their ideas and speech is known as freedom of speech and expression. and it is also a representation of people's independent ideas and thoughts

in any form of communication. However, the rights to free speech and expression are not absolute and are subject to some reasonable restrictions imposed by the government to protect the state's sovereignty and integrity.

Contempt of court is governed by the Contempt of Court Act 1971, which defines contempt of court as a criminal and civil contempt under section 2(a) and under Article 19(1)(a) of the Indian Constitution, which defines freedom of speech and expression, but these rights are not absolute because certain restrictions are imposed under Article 19(2) of the Indian Constitution. According to Amnesty International the right to speech refers to the right to seek, receive and impart information and ideas of all kinds, A democratic nation like India, where the British, who served as its nominal rulers, suppressed such liberties, is seen to need that its citizens have the freedom of speech and expression. Contempt of court, on the other side, refers to an act that is disrespectful or against the court and administration, and such disrespect must be trailed by the court; if a person is found guilty, the court will impose a reasonable punishment.

The Contempt of court according to Black's Dictionary contempt of court refers to "any act which is calculated to embarrass, hinder, or obstruct the court in the administration of justice, or which is calculated to lessen its authority or its dignity. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given."

## **The Origins of the freedom of speech and expression and Contempt of court.**

- Freedom of Speech and Expression

The 400s B.C. marked the beginning of freedom of speech and expression in ancient Greece, where the people enjoyed their freedom of expression. The term "parrhesia" was used in ancient Greek, which means free speech. Freedom of speech and expression has been a fundamental right in Greece since the period of Athens. After that, it appeared in the English Bill of Rights of 1689, where it was ruled that the right to free speech and expression in opposition to any legislative action cannot be refuted or disputed in a court of law other than parliament. Following that, Congress members passed the First Amendment to the United States Bill of Rights on December

15, 1791, which stated that no law shall be passed that will censor the public's ability to express themselves freely or that of the press, nor shall any law interfere with the right of the people to assemble peacefully. The first amendment does not, however, specify what communication is protected by the country's courts as free speech or expression.

- **The Contempt of Court**

In the case of *R. v. Almon* (1764), the beginning of contempt of court was caused by an undeliverable court judgment. In this case, the judge held that the contempt of court power is important to preserve the dignity and respect of the judicial officers and uphold their judgement. This is also a landmark case for contempt of court. the king in ancient times, the king had the authority to administer justice to the people by hearing all parties to a dispute with the assistance of court advisors. But if the king is not able to resolve the dispute, he can appoint a judge, but if anyone disrespects or violates the order of a such person who is appointed by the king, it is treated as contempt and is punishable also.

### **The advantages of freedom of speech and expression.**

1. **To find the truth:** Generally, the most powerful justification for the free speech principle has been the necessity of open discourse for the pursuit of the truth. It is clear from Pericles' famous funeral speech that Athenians did not view public discourse in 431 BC as just something to put up with; rather, they considered that the greatest interests of the city could not be served by a thorough debate of matters prior to the assembly. In a society where speech limitations are accepted, correct information and worthwhile viewpoints cannot be gathered and published. The easiest way to determine whether something is true is whether it can be sold. The truth would emerge from a "free exchange of ideas" based on intellectual competition.
2. **Make it easier for people to be informed.** It is the right of the people to know what's happening in their nation or state, and the local area has to stay informed about the current issues.
3. **A strong democracy:** criticism is important for improving the work of a government because it highlights mistakes and helps to improve the work of the government.
4. **effect on the election:** freedom of speech and expression give a voice to people that if any person by misconduct wins the election, then the such person has the right to raised his voice to the concerned authority about this misconduct. then the authority has the power

to issue a suspension of the candidate from the election.

5. Human rights protection: The media and press play an important role in human rights protection because they raise awareness about violations of human rights and then the relevant authorities take action to protect citizens' rights.
6. voice of the people: sometimes the media and press become the voice of the people in protecting their rights.

### **The advantages of contempt of court**

The judiciary can only work or give justice to everyone when it is free from all other interference. So, the judiciary needs to be independent because it is considered a significant factor in a democratic country like ours. The contempt of court statute protects the dignity of the court, and anyone who violates the administration of justice by disrespecting the court is also punished. For the efficient administration of justice, the contempt rules also punish disrespect of a court and its decisions. The Contempt of Court Act protects the dignity of the judiciary and its work, and if there is disobedience, then it punishes.

### **The limitations of freedom of speech and expression.**

The freedom of speech and expression is not absolute in India; under Article 19(2), some reasonable restrictions can be imposed, as discussed above.

1. Security of the State: In accordance with Article 19(2), reasonable limits on the right to free speech and expression may be put in place to protect the security of the State. The word "security of the state" only applies to significant and extreme types of public disturbance, such as rebellion, waging war against the State, and insurrection, and not to regular violations of public order and public safety, such as illegal assembly, rioting, and altercations. While statements made by an individual that call for or support the commission of heinous crimes like murder are issues that might harm state security. Article 19(2)'s reference to the "security of the state" refers to more than just a threat to national security as a whole. However, risking the security of a portion of the State would equally pose a risk to the security of the entire State.
2. Friendly Relation with Foreign States: This foundation was added by the Constitution (First Amendment) Act of 1951. The state may impose reasonable restrictions on the right to free speech and expression if doing so harms India's friendly relations with another state or states.

3. Decency and Morality: The freedom of speech and expression in the area of morality and decency is restricted by Sections 292 to 294 of the IPC. These sections outline penalties for speech that disturbs or offends the general public in any way. The person's speech must be respectable and not cause a disturbance in public.
4. Defamation; Sections 499 and 500 of the IPC define defamation as a crime in India. Because it is protected by Article 21 of the Indian Constitution, the power to damage someone else's reputation is not a part of the right to free expression. Since everyone has access to these rights, defamation is not considered to be a kind of free speech or expression because it directly attacks the reputation of a person in society.

Contempt of Court: The judiciary is the third pillar of a democracy, and it is critical to protect the rights of the judges; any act that undermines the court's integrity must be punished. If the orders of the judiciary are being executed, then only the judiciary will achieve its objective.

In Section 2 of the 1971 Contempt of Courts Act, the term "contempt of court" is defined. Civil or criminal contempt in accordance with the Act are both referred to as "contempt of court."

### **The Contempt of Court Act, 1971**

Section 1 of the Contempt of Court Act states that its jurisdiction extends to India. This Act does not define "contempt of court," but it does explain the distinctions between criminal and civil contempt. After jurisdiction and definition under the Contempt of Court Act, there is also a separate section that defines what does not amount to contempt instead of defining what is contempt.

Section 12 of the Contempt of Court Act defines the punishment for contempt of court. There is simple imprisonment for a term of up to six months, or a fine of up to Rs. 2000/- (two thousand rupees), or both.

Section 2(a) of the Contempt of Court Act 1971 defines contempt of court, which is divided into two categories: civil contempt of court under Section 2(b) and criminal contempt under Section 2(c). These two sections define civil and criminal contempt, respectively. While civil contempt refers to any intentional non-compliance with the order of the court, the judgement of the court, the direction of the court, or any other order passed by the court in its official capacity shall be

referred to as "civil contempt." on the other side Criminal contempt is defined as the publication of a statement, whether written or spoken, or by any other means, that offends or tends to offend, degrades or tends to degrade, intervenes or tends to intervene with the administration of justice, or interrupts or tends to interrupt any judicial procedure. The law of contempt of court protects the operations of the court and administration but not the judges themselves.

### **Background of Contempt of Court Act in India.**

The law of contempt of court, like the majority of present legislation regulating the country, is of British origin.

The Contempt of Court Act of 1926 was the first law to penalize disrespect. The Act's authority to penalize the High Courts and the lower courts for contempt of court, however, was its exclusive focus and relatively narrow reach. The Act's goal was to settle disagreements between the high courts and those inferior courts that believed they fell under the high courts' authority. The Act also gave the High Court the authority to punish both itself and the lower courts for disobeying the High Court's rulings and procedures. The 1926 statute was repealed by the Contempt of Courts Act, which included additional restrictions such as a cap on the fines the High Court might impose on itself and lower courts. The 1952 Act established a penalty of simple imprisonment for a period that may not exceed six months, a fine that may not exceed two thousand rupees, or a combination of the two. The statute from 1952 additionally stated that if the accused apologizes to the court and the court accepts the apology, the accused would not be punished for contempt of court.

#### **H.N Sanyal Committee, 1963**

The H.N. Sanyal Committee was established to decide how contempt of court will be used in India. The committee was presided over by H.N. Sanyal, India's then-additional solicitor general. The Committee proposed that contempt proceedings be started by a government law officer rather than by the courts directly. The 1971 Contempt of Courts Act included the Sanyal Committee's recommendations. The 1971 statute included greater definitions of what does not constitute contempt of court in addition to having a broad reach. The Sanyal Committee also suggested defenses to use if someone is accused of contempt of court.

#### **Law Commission of India report.**

A total of 568 criminal contempt cases and 96,310 civil contempt cases are pending, with the High

Court of Orissa in criminal matters and the Allahabad High Court in civil cases having the highest number of cases, each with 25,370, according to the Law Commission of India's Report No. 274, 2018's summary. As of 2018, there were 683 civil and 15 criminal contempt cases pending before the Indian Supreme Court.

According to the Law Commission of India's recommendation, the court struck down certain provisions regarding criminal contempt of court, such as "scandalizing of court," as it could not be an efficient process, and such an amendment will have no effect on the court's jurisdiction to penalize for contempt. The Law Commission of India also observed that any amendment to the Act of 1971 that likewise seeks to modify the current definition of "contempt" must also result in ambiguity since the act itself may result in more instances of varying definitions and interpretations when superior courts exercise their natural powers of court contempt. It seems undesirable to extend the definition of contempt of court to "willful disobedience to an order or judgment." The effect of this law will change if its application is changed or restricted. As a result of this reform, respect for the courts, their powers, and the way they work will also decline.

### **Article 129 and 215 of the Indian Constitution**

The Indian Constitution, Article 129, says that "the Supreme Court is to be a court of record." The Supreme Court of India is the record court and must also contain all the power regarding the record court, along with the power to punish contempt of court. The Supreme Court of India has the inherited power to punish for contempt of court, whether any proceeding or judgement infringes on the dignity of the court, according to Article 129 of the Indian Constitution.

According to Article 215 of the Indian Constitution, "High Courts should be courts of record." Each high court in India must be a court of record, according to the article, and these high courts have all the authority needed to do so, including the authority to punish themselves for contempt of court. Under Article 215, every high court is given the authority to keep records of both itself and its subordinate courts. The clause also gives the court the authority to declare itself in contempt of court if any decision or order breaches its own sense of justice or dignity.

### **The essentials of contempt of court.**

There are two types of contempt in the contempt of court Act. first one is civil contempt, and the second one is criminal contempt.

### **Criminal Contempt**

Publication or disclosure of all information: Contempt of court applies to anybody who interferes with the rule of law by their words, actions, or publications while also insulting the court's honor.

Lowering the Authority of the Court: Publications must not be of a character that insults the court's dignity or undercuts its authority. The judge's credibility must be questioned because of the defamatory behavior.

interfering with the administration of justice: The words that are published must have the potential to influence how the court is run, whether a certain authority has jurisdiction over the matter, and if such action will directly or indirectly influence court proceedings. any type of courtroom.

### **Civil Contempt**

Knowledge of the court's order: If the accused knows that the court has issued a certain order and yet disobeys it after having this knowledge, he or she is guilty of contempt of court.

The respondent must be able to follow the sequence competently. Instead of some random individual who has nothing to do with the court's order, the accused defendant must be a person who is competent to follow the court's commands.

Disobedience of a court order: The individual charged with contempt of court has allegedly caused disobedience to a court order or a court decision, and such behavior must have been done intentionally.

## **What does not amount to contempt of court.**

Under the Contempt of Court Act, it defines what does not amount to a contempt.

Reasonable Court Proceedings Complaint: In a contempt of court action, under Section 5 of this Act, a person is not guilty if he or she makes a fair criticism of a court's work by exercising his or her rights in the act of judiciary. Fair criticism is defined as criticism that is reasonable and does not degrade the integrity or processes of the court. The Section 5 defense, however, cannot be used if the statements are untrue.

### Innocent Publication

Under Section 3 of the Contempt of Courts Act, no one who practices the disclosure and distribution of innocent information may be subject to contempt of court. Subparagraph 1 of Article 3 sets forth the rules according to which an individual shall not be punished by contempt of court sanctions if he has disclosed anything, in writing or orally, by any kind of obvious sign or any visible act that interferes with or tends to interfere with the administration of natural justice, and that if at the time of publication of such data, the publisher has no reason to believe that the proceedings are pending in court.

Complaint against the judges of subordinate courts The Contempt of Courts Act's Section 6 states that making statements about a court's presiding officer to either a subordinate or lower court or the High court in good faith is not considered to be contempt of court.

### **The Conflict**

in the case of Shri Baradankanta Mishra v. Registrar of Orissa and Another (1973). In the above case, the Supreme Court of India held that the important word is "justice," not "judge." The primary concern is focusing on the justice system and not on the judges. The Contempt of Court Act upholds the right to freedom of speech and expression as well as the right to justice. only when there is a bad intention to insult the courts' dignity and refrain from making unfair or insignificant remarks about the judiciary and judicial officers.

in the case of The State v. Editors, Printers, and Publishers (1954) The law of contempt does not apply in situations where there is no mala fide intent to insult the court's dignity, the Supreme Court of India ruled. Instead, the law of contempt applies when a publication is published with the intention of undermining the principles of a fair trial in a case that is currently before the court.

### **CONCLUSION**

In India, all people are guaranteed freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. It is not an absolute right; there are some restrictions. are provided under Article 19(2) of the Indian Constitution, and contempt of court is one of the exceptions under Article 19(2). As we all know, the right to freedom of speech and expression is also subject to other reasonable restrictions; these are decency and morality, defamation, the security of the state, and friendly relations with foreign states; they are under Article 19(2) of the Indian Constitution.

For maintaining a reasonable balance in society, restrictions play a very important role.

The Contempt of Court Act plays a very important role in preserving the dignity of the judiciary and the administration. The concept of contempt of court has been invoked time and again by the judiciary to protect the authority and respect of the courts.

Another and most important area of concern is the conflict between freedom of speech and expression and contempt for the courts when it is unclear what violates the dignity of the courts, etc. It is not clear what contempt is, while it is clear what is not covered by the Disparagement of Courts Act of 1971. The boundary between freedom of speech and expression and contempt of court depends on the judge's judgement and interpretation, which makes the rules governing such behavior unclear.

