

## Free Speech vs Contempt of Court, An Analysis in Light of the Prashant Bhushan Case

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The Prashant Bhushan Contempt of Court Case – Where Does the Ambit of Free Speech End?

“What is freedom of expression? Without the freedom to offend, it ceases to exist” – Salman Rushdie

What does freedom of speech mean especially in a diverse country like India? Well, by definition, Article 19(1)(a) of the Constitution of India says that all citizens have the right to freedom of speech and expression. This means the right to express one’s own convictions and opinions freely be it verbally or by writing, printing, pictures or any other mode. However, on many occasions, it is observed that freedom of speech and expression is limitless. People perceive it to be their right to be able to say and believe anything. Fortunately, or unfortunately, that is not the case. Much like the other fundamental rights enshrined under Part III of the Constitution of India, the right to freedom of speech and expression is subject to certain reasonable restrictions.

Restrictions that may be put on the right to freedom of speech & expression are the interest of the sovereignty, integrity and security of India, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement of offence.

Citizens of India are at liberty to exercise their fundamental right to freedom of speech and expression subject to the abovementioned restrictions.

### CONTEMPT OF COURT vs RIGHT TO FREEDOM OF SPEECH

The freedom of expression guaranteed under the constitution and the independence of the judiciary are the two basic and most important constituents of a democracy. Constructive criticism is the most important ingredient for the development of democracy and the Supreme Court should protect free speech. But where to draw the line? When the criticism has the tendency of lowering down the authority of the judge and even obstruct the administration of justice, the Court has the power to punish any such act which tends to demean the value of judiciary under the Contempt of Courts Act, 1971 (“Act”).

Section 5 of the Act states that fair criticism is not to be termed as contempt of court. However, the irony of the situation is highlighted when it is the judiciary against whom the remark has been made, gets the power to

decide whether the same was constructive in nature or not.

#### THE PRASHANT BHUSHAN CASE: TOO MUCH OF FREEDOM?

The most recent contempt of court case in India is the Prashant Bhushan contempt case[1] wherein the Hon'ble Supreme Court has initiated *suo moto* contempt proceedings against Advocate on Record (AOR), Shri Prashant Bhushan for his tweets against current Chief Justice of India, Shri SA Bobde, his 2009 interview with Tehelka magazine wherein he questioned the integrity of a few past Chief Justices of India and some of his other recent tweets where he has questioned the long absence/limited functioning of the courts during the initial days of the lockdown period.

However, when the contempt proceedings were initiated Mr. Bhushan was quick to withdraw his remarks with regard to his tweet. He even offered an apology for this tweet and clarified that he meant no disrespect to the office of the Chief Justice of India. However, Mr. Bhushan vehemently refused to apologise either for his Tehelka magazine interview which dates back to 2009 or for any of his other tweets.

Mr. Bhushan has in his reply to the contempt proceedings stated that he believes what he meant no disrespect to the offices of the Hon'ble Judges in the interview and the tweets. He was merely offering constructive criticism and that tendering an apology whether conditional or unconditional would not be sincere.

The *suo moto* contempt proceedings against Prashant Bhushan were initiated on 21<sup>st</sup> July 2020 and on 14<sup>th</sup> August 2020, a constitutional bench found Mr. Bhushan guilty of the offence of contempt of court and the matter is still *sub-judice* with regard to the quantum of punishment which is due to be pronounced later this month. This seems to be the quickest the Hon'ble Supreme Court has disposed of a matter on merits in recent times. One can only hope this level of efficiency remains for other matters as well.

#### CONTEMPT OF COURT: A NEW TREND?

A similar case was observed in the post emergency era of the year 1977-78 when two editors – Shamlal of The Times of India and S. Mulgaokar of The Indian Express were charged with contempt of court for their articles in their respective newspapers where they questioned the bench which decided the case of A.D.M. Jabalpur v Shivakant Shukla[2] which was decided by then Chief Justice of India Justice A K Ray, Justice M H Beg and Justice Jaswant Singh. The articles penned by Shamlal and Mulgaokar were published when Justice M H Beg was appointed as the Chief Justice of India and both articles while critiquing the above-mentioned judgement questioned the integrity of the judges.

Both articles, one of which contained insights from various public intellectuals discussed the behaviour of the judges during the recently concluded emergency period. The then government led by Janata Party eased the restrictions and re-established press freedom, which was something these articles took advantage of. One of the articles even went on to state that Justice D Y Chandrachud and Justice P N Bhagwati should not be considered for the position of Chief Justice of India despite both of them being next in line respectively in order of seniority.

Two separate cases of contempt were instituted *suo-moto* against both the editors. Both editors chose to contest their matters and a constitutional bench would eventually hold that neither of them acted in contempt of court. It is pertinent to note that the two editors made comments questioning the

integrity of some of the sitting judges and the then Chief Justice of India and yet they were held to be not in contempt of court. This goes to show the importance that was given to the freedom of speech and expression of the editors' and the freedom of press as well.

In the instant case, Mr. Bhushan being an Indian citizen definitely acted well within his fundamental rights enshrined under Article 19 Clause 1 sub-clause (a) of the Constitution of India however as his comments included some statements which were considered derogatory to the office of the Chief Justice of India and to other senior members of the Judiciary, contempt proceedings were initiated against him.

The proceedings that were conducted against Mr. Bhushan were indeed lawful and as per the established procedure. As much as Mr. Bhushan had a right to freedom of speech and expression, he also had a responsibility especially as an officer of the court to remain within the confines of the reasonable restrictions and above all respect the office of the Chief Justice of India.

#### CONCLUSION

While it is to be noted that all citizens of India are guaranteed the right to freedom of speech and expression, contempt of court is indeed one of the reasonable restrictions that can act as a rider on this right. None of the fundamental rights guaranteed to Indian citizens are absolute. The right to freedom of speech and expression is also subject to certain other reasonable restrictions such as defamation, decency and morality, public order and incitement of offences.

One could argue that the ambit of the reasonable restrictions enshrined between clause 2 to 6 of Article 19 of the Constitution of India are so wide that they restrict the very rights that clause 1 of Article 19 enshrines. However, the reasonable restrictions were included with the objective of maintaining balance as the framers of the constitution knew that if they were to enshrine absolute rights on Indian citizens, dire circumstances would ensue leading to a failure of constitutional machinery.

After all, the Constitution of India as we know it is a living document that has survived for over seven decades now despite several amendments being made and various foiled attempts to dilute the spirit of the Indian Constitution.

- [1] 2020 SCC OnLine SC 588.

- [2] (1976) 2 SCC 521.

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