



## **Freedom of speech & expression: A study under the backdrop of 200th law commission report**

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### **Abstract**

Through my present research paper I am going to highlight the reason due to which law commission submitted its 200th report and why it precluded media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial. As the commission has said, "Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice".

I am also going to highlight the restriction given under Article 19(2) of Constitution of India and on what grounds such restriction shall be imposed by law.

200th law commission report has suggested an amendment to the Contempt of Courts Act. Under the present provision such publications would come within the definition of contempt only after the charge sheet is filed in a criminal case, whereas it should be invoked from the time of arrest. In another controversial recommendation, it has suggested that the high court be empowered to direct a print or electronic medium to postpone publication or telecast pertaining to a criminal case.

On November 3, 2006, former chief justice of India Y K Sabharwal expressed concern over the recent trend of the media conducting 'trial' of cases before courts pronounce judgments, and cautioned: "According to law an accused is presumed to be innocent till proved guilty in a court of law, and is entitled to a fair trial. So, it is legitimate to demand that nobody can be allowed to prejudge or prejudice one's case? Why should judges be swayed by public opinion?"

**Keywords:** Suo Motu, contempt of court, freedom of speech and expression, reasonable restriction imposed under article 19(2)

### **Introduction**

Freedom of speech and expression is a natural right, which a human being acquires on birth. It is, therefore, a basic right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). Article 19(1) (a) of Indian Constitution says that all citizens have the right to freedom of speech and expression. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression connotes also publication and thus the freedom of press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. This propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value. The freedom of speech and expression includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people; otherwise this freedom would not include the freedom of press<sup>[1]</sup>. The 200th Report of the Law Commission on "Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure

(Amendments to the Contempt of Court Act, 1971)". The subject was taken up suo motu having regard to the extensive prejudicial coverage of crime and information about suspects and accused, both in the print and electronic media<sup>[2]</sup>.

### **Main Aspect**

There is today a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have prejudicial impact on the suspects, accused, witnesses and even Judges and in general, on the administration of justice. According to our law, a suspect/accused is entitled to a fair procedure and is presumed to be innocent till proved guilty in a Court of law. None can be allowed to prejudge or prejudice his case by the time it goes to trial. Art. 19(1)(a) of the Constitution of India guarantees freedom of speech and expression and Art. 19(2) permits reasonable restrictions to be imposed by statute for the purposes of various matters including 'Contempt of Court'. Art. 19(2) does not refer to 'administration of justice' but interference of the administration of justice is clearly referred to in the definition of 'criminal contempt' in sec. 2 of the Contempt of Courts Act, 1971 and in sec. 3 thereof as amounting to contempt. Therefore, publications which interfere or tend to interfere with the administration of justice amount to criminal contempt under that Act and if in order to 2 preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

At present, under sec. 3(2) of the Contempt of Courts Act, 1971 read with the Explanation below it, full immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case, if by the date of publication, a chargesheet or challan is not filed or if summons or warrant are not issued. Such publications would be contempt only if a criminal proceeding is actually pending i.e. if chargesheet or challan is filed or summons or warrant are issued by the Court by the date of publication. Question is whether this can be allowed to remain so under our Constitution or whether publications relating to suspects or accused from the date of their arrest should be regulated? Supreme Court and House of Lords accept that prejudicial publications may affect Judges subconsciously: The Supreme Court and the House of Lords have, as pointed out in Chapter III of our Report, observed that publications which are prejudicial to a suspect or accused may affect Judges also subconsciously. This can be at the stage of granting or refusing bail or at the trial. Supreme Court holds prejudicial publication after 'arrest' can be criminal contempt: Under the Contempt of Courts Acts of 1926 and 1952, unlike the Act of 1971, there was no specific definition of 'civil' or 'criminal' contempt. Further before 1971, the common law principles were applied to treat prejudicial publications made even before the 'arrest' of a person as contempt. In fact, some Courts were treating as 'criminal contempt', prejudicial publications even if they were made after the filing of a First Information Report (FIR). But the Supreme Court, in *Surendra Mohanty v. State of Orissa* <sup>[3]</sup> however, held that filing of an FIR could not be the starting point of pendency of a criminal case. Because of that judgment, a prejudicial publication made after the filing of the FIR gained immunity from law of contempt. But in 1969, the Supreme Court held in *A.K. Gopalan v. Noordeen* <sup>[4]</sup> (15th Sept., 1969) that a publication made after 'arrest' of a person could be contempt if it was prejudicial to the suspect or accused. This continues to be the law as of today so far as Art. 19(1) (a), 19(2) and Art. 21 are concerned <sup>[5]</sup>.

### Historical background

In India, this right is granted by Article 19(1) (a). However, this right of freedom to speech and expression is not completely unchecked. Article 19 (2) allows for reasonable restrictions to be imposed on all fundamental rights, including that of freedom to speech and expression. In *Romesh Thappar v Union of India* <sup>[6]</sup>, Justice Patanjali has rightfully held that 19(1) (g) is the very basis and essence of the constitution and our democracy. Reasonable restrictions, however, he noted, should be such that others' rights should not be hindered or affected by the acts of one man, in the case of. The judiciary has upheld the restrictions that can be imposed and the author describes them under several subheadings, but the courts have also held that the government's interference in this right has to also be kept in check.

### Statutory Provision

- Contempt of Court Act, 1971
- Constitutional Provision PART 3 ARTICLE 19(1)a & ARTICLE 19(2)
- Emergency & Press Censorship

### Contempt of Court Act, 1971

Contempt of court <sup>[7]</sup>, often referred to simply as "contempt", is the offense of being disobedient to or discourteous towards a court of law and its officers in the form of behavior that opposes or defies the authority, justice and dignity of the court. It manifests itself in willful disregard of or disrespect for the authority of a court of law, which is often behavior that is illegal because it does not obey or respect the rules of a law court.

There are broadly two categories of contempt: being rude or disrespectful to legal authorities in the courtroom, or willfully failing to obey a court order <sup>[5]</sup>. Contempt proceedings are especially used to enforce equitable remedies, such as injunctions. In some jurisdictions, the refusal to respond to subpoena, to testify, to fulfill the obligations of a juror, or to provide certain information (with the exception of Fifth Amendment rights and legitimate concerns for personal safety following testimony<sup>1</sup> in the United States) can constitute contempt of the court.

When a court decides that an action constitutes contempt of court, it can issue a court order that in the context of a court trial or hearing declares a person or organization to have disobeyed or been disrespectful of the court's authority, called "found" or "held" in contempt. That is the judge's strongest power to impose sanctions for acts that disrupt the court's normal process.

A finding of being in contempt of court may result from a failure to obey a lawful order of a court, showing disrespect for the judge, disruption of the proceedings through poor behavior, or publication of material or non-disclosure of material, which in doing so deemed likely to jeopardize a fair trial. A judge may impose sanctions such as a fine or jail for someone found guilty of contempt of court.

### Constitutional Provision (Part III.-Fundamental Rights.- Arts. 19.)

Right to Freedom Article 19. (1) All citizens shall have the right (a) to freedom of speech and expression;

19 [(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 5[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

Reasonable Restriction imposed under Article 19(2)

Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. The freedom of speech and expression does not confer an absolute right to speak and publish, without responsibility, whatever one may choose or an unrestricted or unbridled license that gives immunity for every possible use of language and does not prevent punishments for those who abuse this freedom. Clause (2) of Article 19 specifies the grounds on which the freedom of speech and expression may be restricted. It enables the legislature to impose reasonable restrictions on the right to free speech "in the interests of" or "in relation to" the following:

- 1) Sovereignty and integrity of India. 2) Security of the state.

3) Friendly relations with foreign states. 4) Public Order. 5) Decency and Morality. 6) Contempt of court. 7) Defamation. 8) Incitement to an offence. Reasonable restrictions under these heads can be imposed only by a duly enacted law and not by an executive action<sup>[8]</sup>.

Supreme Court<sup>[9]</sup> has held that the commitment of freedom of expression demands that it cannot be suppressed unless the community interest is really endangered and that the anticipated danger should not be remote, conjectural or farfetched and it should have proximate and direct nexus of thoughts repressed in a movie and the expression of thought should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg". He submitted that Section 5B of the Central Act of 1952 enumerates the principles for guidance in certifying films and one of the principles enumerated therein is that a film shall not be certified for public exhibition if, in the opinion of the competent authority to grant certificate, the film or any part of it is against the interests of public order. He submitted that once the film Jodha Akbar has been confined under Section 5A of the Central Act of 1952 after the authority had formed the opinion that the film will not effect public order, unless the situation is so grave and intrinsically dangerous to public order, the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution should not be affected by any order preventing the exhibition of a film. He submitted that the Court should strike down the impugned order dated 22.2.2008 as public order in the State of Madhya Pradesh was not really endangered by the exhibition of film "Jodha Akbar" and the State Government appears to have passed the impugned order dated 22.2.2008 on the pressure of Kshatriya Committee<sup>[10]</sup>.

### Emergency & Press Censorship

In general, censorship in India, which involves the suppression of speech or other public communication, raises issues of freedom of speech, which is protected by the Indian constitution.

The Constitution of India guarantees freedom of expression but places certain restrictions on content, with a view towards maintaining communal and religious harmony, given the history of communal tension in the nation<sup>[11]</sup>. According to the Information Technology Rules 2011, objectionable content includes anything that "threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states or public order"<sup>[12]</sup>.

In 2018, the Freedom in the World report by Freedom House gave India a freedom rating of 2.5, a civil liberties rating of 3, and a political rights rating of 2, earning it the designation of free. The rating scale runs from 1 (most free) to 7 (least free)<sup>[13]</sup>. Analysts from Reporters Without Borders rank India 136th in the world in their 2017 Press Freedom Index<sup>[14]</sup>. In 2016, the report Freedom of the Press by Freedom House gave India a press freedom rating of "Partly Free", with a Press Freedom Score of 41 (0-100 scale, lower is better)<sup>[15]</sup>.

### Conclusion

Through this research paper I have highlighted the reasonable use of Article 19 (1) (a) i.e freedom of speech and expression

and also I have further presented the reasonable restriction given under Article 19 (2) of Constitution of India to be imposed by statute for the purposes of various matters like Sovereignty and integrity of India, Security of the state, Friendly relations with foreign states, Public Order, Decency and Morality, Contempt of court, Defamation, Incitement to an offence. Reasonable restrictions under these heads can be imposed only by a duly enacted law and not by an executive action

I have also written about section 2 & 3 of the Contempt of Courts Act 1971, as it refers 'criminal contempt' in the definition of the administration of justice. Therefore, publications which interfere or tend to interfere with the administration of justice amount to criminal contempt under that Act and if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

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