

**Creative Expansion of Art. 19(1)(A) vis-a-vis
Contempt of Court**

Dr. M. C. Sheikh¹

*'Freedom of expression and of the press will yield to
safeguard the integrity of the course of justice'*

— Justice M.A. Binder

I. Introduction:

Democracy can thrive not only under the vigilant eyes of its legislature, but also under the care and guidance of public opinion, and the press is, par excellence, the vehicle through which opinion can become articulate. The true measure of health and vigour of democracy is always to be found in its freedom of speech and expression. Free and impartial press is indispensable to the healthy functioning of democracy. Freedom of expression is a fundamental human right and essential for the existence of free media. The protector of such right is the court. Public scrutiny of the courts by the media helps safeguard the integrity of the courts. The symbiotic relationship of the judiciary and media is the bedrock for sustaining human rights and democracy.

India, until independence, had, in its *corpus juris*, statutory secrecy of British vintage that continues to be our colonial heritage. But the constitution departs from this policy and demands an open Government accountable to the people who are armed with freedom of expression, inclusive of the right to receive and impart information. The freedom of the Press becomes a collective expression of the people's right, to search and seek facts wherever they are, process them and disseminate news and views to educate citizens into intelligent participation in the governance of the country.

The doctrine of freedom of expression is generally thought to single out a class of 'protected acts' which it holds to be immune from restrictions to which other acts are subject. In particular, there will be cases where protected acts are held to be immune from restriction despite the fact that they have as consequences harms which would normally be sufficient to justify the imposition of legal sanctions. It is the existence of such cases which makes freedom of expression a significant doctrine and which makes it appear, from a certain point of view, an irrational one.

1 B. Sc, LL.M, NET, MBA, Ph. D (Law). Head & Asst. Professor in Law, Shahaji Law College, Kolhapur.

II. International Efforts:

The British Royal Commission has emphasized that for the success of democracy the press should provide a clear and truthful account of events, and a forum for discussion and informed criticism, and a means where individuals and groups can express a point of view or advocate a cause².

European Convention: The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 declares in Article 10(1), the same right as to freedom of expression, on the lines of Article 19 of the Universal Declaration. But, Article 10(2) deals with the restrictions : “10(2) : The exercise of these freedoms, since it carries duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interest of national security, territorial integrity or public safety, for the prevention of disorder in crime, for the protection of health or morals for the protection of reputation of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and in particularly of the judiciary”.

The Madrid Principles: The Madrid Principles on the Relationship between the Media and Judicial Independence (1994) - A group of 40 distinguished Legal Experts and Media representatives, convened by the International Commission of Jurists (ICJ), at its Centre for the Independence of Judges and Lawyers (CIJL) and the Spanish Committee of UNICEF met in Madrid, Spain between 18-20, January 1994. “The media have an obligation to respect the rights of individuals, protected by the International Covenant and the independence of the judiciary”. It refers to the principles which are drafted as “minimum” standards of protection of expression, which are as –

(1) Freedom of expression (as defined in Article 19 of the Covenant), including the freedom of the media – constitutes one of the essential foundations of every society which claims to be democratic. It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence.

(2) This principle can only be departed from in the circumstances envisaged in the International Covenant on Civil and Political Rights, as interpreted by the 1984 *Siracusa Principles* on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights³.

(3) The right to comment on the administration of justice shall not be subject to any special restrictions.

‘Contempt of Court law’ deals with non-interference with the

2 Report of the first Royal Commission (1947) pp 100-101.

3 U.N. document E/CN/4/1984/4.

“administration of justice” and that is how the “due course of justice” that is required for a fair trial, can require imposition of limitations on the freedom of speech and expression.

III. Judicial activism for Art. 19(1)(a):

Freedom of the Press is undoubtedly one of the most important freedoms in a democratic society. Under Indian constitution, there is no separate guarantee of freedom of the Press. It is implicit in the Art. 19(1)(a) i.e. freedom of expression which is conferred on all citizens⁴. The freedom of speech and expression includes the liberty of press within its scope and ambit because in the absence of free press the citizens may not be able to form enlightened opinion. The freedom of press also implies freedom of propagation of ideas and freedom of circulation⁵.

The freedom of press is not higher than the freedom of an ordinary citizen⁶. Since India is a party to the International Covenant on Civil and Political rights, therefore, it is also bound to respect the right to freedom of expression⁷. Everyone shall have the right to hold opinion without interference and have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either in speech, in writing or in print in the form of art or through any other media of his choice⁸.

Of speech and expression implies a right to express one’s opinion and conviction orally or in writing or in print and it includes number of rights and freedoms, such as, freedom of press. Crucial point is not that freedom of expression is politically useful but that it is indispensable to the operation of a democratic system.

“There is no manner of doubt that judges are accountable to the society and their accountability must be judged by their conscience and oath of their office. Any criticism about the judicial system or the judges which hampers the administration of justice or bring administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. National interest requires that all criticism of the judiciary must be strictly rational and sober and proceed from the highest motives without being coloured by any partisan spirit or tactics. There is no manner of doubt that freedom of expression as contemplated by Article 19(1)(a) of the Constitution is available to the press and to criticize a judgment fairly albeit fiercely is no crime but a necessary right. A

4 Virendra V. State of Punjab, AIR 1958 S C 986.

5 Brij Bhushan V. State of Delhi, AIR 1950 S(129).

6 *Ibid.*

7 Director General, Directorate General of Doordarshan V. Anand Patwardhan, AIR 2006 S C 3346.

8 Art. 19, International Covenant on Civil and Political Rights.

fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. In fact, such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility”⁹.

The “freedom of speech and expression” in Article 19(1)(a) means the right to express one’s convictions and opinions freely, by word of mouth, writing, printing, pictures or electronic media or in any other manner¹⁰. The freedom includes the freedom of ideas, their publications and circulation¹¹. It was stated that this right includes the right to acquire and impart ideas and information about matters of common interest¹². The freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also¹³. “Freedom of speech and of the press lie at the foundation of all democratic organizations, for without free political discussion no public education, which is essential for the proper functioning of the process of popular government, is possible”¹⁴.

“One sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”¹⁵.

The press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom¹⁶. Freedom of press has three essential elements. They are:

- i. freedom of access to all sources of information¹⁷,
- ii. freedom of publication, and
- iii. freedom of circulation.

In India, the press has not been able to exercise its freedom to express the popular views. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression¹⁸. The Supreme Court has made it clear that, the purpose of the press is to advance the public interest

9 J. M. Panchal, J. in Hari Singh Nagra V. Kapi Sibal (2010) 7 SCC 67, para 21, 22.

10 The Supreme Court of India, in Life Corporation of India. V. Manubhai D. Shah (1992) (3)(SCC 637).

11 In Romesh Thapar V. State of Madras AIR 1950 SC 594.

12 Hamdard Dawakhana V. Union of India, 1960 (2) SCR 671.

13 Maneka Gandhi V. Union of India, AIR 1978 SC 597.

14 Romesh Thapar V. State of Madras AIR 1950 SC 124.

15 Union of India V. Assn. for Democratic Reforms (2002)5 SCC 294.

16 Indian Express V. Union Of India, (1985)1 SCC 641.

17 M.S.M. Sharma V. Shri Krishna Sinha, AIR 1959 SC 395.

18 Express Newspapers V. Union Of India, AIR 1958 SC 578, 617.

by publishing facts and opinions without which a democratic electorate cannot make responsible judgments and it is the duty of the courts to uphold the freedom of press, to check all malpractices which interfere with free flow of information and to invalidate all laws or administrative actions which interfere with the constitutional mandate¹⁹. The freedom of speech and expression guaranteed by Art. 19(1)(a) gives citizen right to propagate and publish his ideas, to disseminate them, to circulate them either by mouth or writing²⁰. The freedom of the press is both qualitative and quantitative. The press should inform the people of the current events and trends of opinion to create and sustain an ever widening range of interest, and to encourage discussion of current problems with due regard to all points of view all of which involve accurate and impartial presentation of news and views and dispassionate evaluation conflicting ideals²¹. The concept of freedom of speech and expression and freedom of press cannot be put in any narrow straitjacket. It is the concept which is living and it cannot be confined in any narrow limits, thus restricting its growth²². The major contents of the constructive interpretation of the freedom of press are-

- i. Freedom to gather information from diverse and antagonistic sources on a competitive basis free from any monopolistic control from the government²³.
- ii. Freedom to inform public true facts without fear of favour²⁴
- iii. Right to have free access to source of information²⁵ therefore right to public access or information was a *sine qua non* of rule of law.

IV. Contempt of Court:

In a democratic country, like India, freedom of expression is an important right but such right is not absolute in as much as the Constitution itself, while it grants the freedom under Art. 19(1)(a) permitted the legislature to impose reasonable restriction on the right, in the interests of various matters, one of which is the fair administration of justice as protected by the Contempt of Courts Act, 1971. No person can flout the mandate of law of respecting the Courts for establishment of rule of law under the cloak of freedom of speech and expression guaranteed by the Constitution²⁶.

Journalists should uphold accuracy and fairness and make a conscious

19 Indian Express Newspapers V. Union Of India (1985)1 SC (64) AIR 1986 S C 515.

20 Sakal Papers V. Union of India, AIR 1962 S C 305.

21 All India Newspapers Editors' Conference Memorandum to Indian Press Commission Report, p. 339.

22 Justice S.S. Chadha in K.K. Birla V. The Press Council and Others, I.L.R. (1976)1 Delhi 753 at 790.

23 Himat Lal V. Police Commissioner, A.I.R. 1973 S C 87.

24 Kuldip Nayar (1979), 'Freedom of the Press,' Vidura, Journal of the Press Institute of India, Vol. XVI No. 3.

25 Cricket Association of Bengal V. Doordarshan AIR 1995.

26 In Re: Arundhati Roy, AIR 2002, SC 1375 p. 1380.

attempt to present diverse views on a situation or an issue²⁷. In the exercise of right of freedom of speech and expression, nobody can be allowed to interfere with the due course of justice²⁸ or lower the prestige or authority of the court even in the grab of criticising a judgement²⁹. But, as it constitutes a restriction on the freedom of expression, this jurisdiction should be sparingly exercised³⁰.

The essence of law of contempt is to protect the justice and to uphold the majesty and dignity of law courts. The contempt of court jurisdiction is exercised not to protect the dignity of an individual judge but to protect the administration of justice from being maligned³¹. Contempt to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witnesses during litigation. Contempt consist of words spoken or written which obstruct or tend to obstruct the administration of justice³². The Supreme Court, in examining the scope of the contempt of court laid down that the test in each case is whether the impugned publication is a mere defamatory attack on the judge or whether it will interfere with the due course of justice or the proper administration of law by the court³³. However, contempt of court is of two types i.e., civil contempt³⁴ which has been as 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 and criminal contempt³⁵ which has the publication (whether by words, spoken or written or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

i. Scandalizes or tends to scandalize, or lower the authority of, any court, or ii. Prejudice, or interferes or tends to interfere with the due course of any judicial proceeding. iii. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. The jurisdiction to punish for contempt touches upon the two important fundamental rights of the citizens, viz., the right to personal liberty and the right to freedom of expression. In pursuance of this, the Contempt of Courts (Amendment) Act, 2006 amended Sec. 13 recognize two fundamental rights - the right to freedom and the right to life and personal liberty - and to introduce "truth" as valid defense by an author, public speaker or a working journalist against criminal contempt³⁶. The truth should ordinarily be allowed as defense unless it finds that it is only a camouflage

27 Prime Minister Manmohan Singh, *THE HINDU*, Karnataka, Feb. 13, 2011 p.11.

28 Nambudiripad V. Nambiar, AIR 1970 SC 2015 (2019).

29 Daphtary V. Gupta, AIR 1971 SC 1132 (1142).

30 Ram Dayal V. State of Bihar AIR 1962 SC 955.

31 Supreme Court Bar Association V. Union of India and Others, AIR 1998 SC 1895.

32 Oswal and Hulsbury, <http://www.legalserviceindia>. Last visited May 21, 2010 at 6.30pm.

33 C. K. Daphtary V. O. P. Gupta (1971)1 SCC 626.

34 Under section 2(b) of the Contempt of Courts Ad, 1971.

35 Under section 2(c) of the Contempt of Courts Ad, 1971.

36 Krishnadas Rajgopal, *The Indian Express*, Pune Aug. 17, 2010, p 102.

to escape the consequences of deliberate or malicious attempt to scandalize the court or is an interference with administration of justice³⁷. The amended section enables the court to permit justification by truth as a valid defense in any contempt proceeding if it is satisfied that such defense is in public interest and the request for invoking the defense is bonafide.

V. Conclusion:

The Architects of the Indian Constitution recognized the maintenance of dignity of court as one of the cardinal principles of rule of law in a democratic set up. Healthy and Constructive criticisms are the necessary features for the development of the democracy which can be exercised by freedom of speech and expression. The symbiotic relation between the freedom of speech and expression and judiciary place an obligation on the freedom of the individual as well as judiciary.

Freedom of speech, expression, press, media and the matters related to it requires the ethical and professional practices for a delicate balance with judiciary. It is high time in India to do away with the prevalent conservative view of contempt law and bring in the liberal approach advocating free expression pursued by western and other commonwealth countries.

37 Advocate Association V. R.K. Jain, AIR 2011, S C 2234.