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Abstract: Article 19 in India’s Constitution is one of the jewels among the Fundamental Rights guaranteed by our Constitutional framework. It is well known that the State guarantees the so-called protection of rights regarding freedom of speech to every citizen of the country, though, certain reasonable restrictions do apply. Indeed, the history of the said “freedom of speech” in India has been far better than several third-world countries. By and large, the judiciary, legislators, regulators, executives, and citizens have made conscious efforts to preserve and improve the freedom of speech in free India over the past seven decades. Several social and political thinkers, however, are raising concerns lately regarding the increasing cases of sedition, UAPA and alike against journalists, cartoonists, performing artists, literary personalities, historians, and scholars.

It is hypothesized in this research that the judiciary is probably going to be the only and ultimate relief-granting institution in India for all those who are accused of crossing the “limits” of decency, fairness and truth while enjoying one’s own freedom of speech and therefore face atrocities by elected representatives, bureaucrats, and police.

Through this research, efforts have been made to collate and categorize particularly those cases in the recent times; wherein the cartoonists and comedians were brought to justice because “someone” had a problem with their expression.

Keywords: India, Cartoons and Comedy, Article 19, Freedom of Speech and Expression, Supreme Court, Sedition, Contempt of Court.

Introduction

The Oxford Dictionary elucidates ‘cartoons’ as “an amusing drawing in the newspaper or magazine, especially regarding politics or the events in the news”\(^1\). The Cambridge Dictionary outlines ‘cartoons’ in several ways; a drawing, especially in a newspaper or magazine, that tells a joke or makes a humorous political criticism, a TV programme or short film, usually a funny one, made using characters and images that are drawn rather than real; a movie made using characters and images that are invented and drawn\(^2\). Further, the Oxford Lexicon Dictionary describes ‘comedy’ as “professional entertainment consisting of jokes and sketches, intending to make the subject of the comedy laugh”\(^3\).

Cambridge Dictionary outlines ‘comedy’ as a (type of) film, play, or book that is intentionally funny either in its characters or its action.\(^4\) It is not a coincidence that the

4. Cambridge dictionary, supra note 3
elected representatives, Governments, and administrative authorities, who do not appreciate cartoons and comedy, were probably judged historically to be sycophants, anti-dialogue, and pro-elites. From their perspective, cartoonists and comedians erode their authority and public image by employing humour and misrepresentation of facts. But then how would a cartoonist or comedian grab the attention of audience without being humorous and exaggerative?

Free speech plays a crucial role in the working of any democracy wherein every citizen has the basic right enshrined under the Constitution to express his/her ideas, beliefs, and schemes of action through various means and modes. It is well known that the fundamental right to “free speech” is particularly indispensable in a democracy because it facilitates the communication and dissemination of diverse ideas and thus helps in enjoying personal autonomy as well.

All nations in the modern times have imposed on themselves the obligation to respect and adhere to the universalism of this right to freedom of speech. Article 19 of the Universal Declaration of Human Rights lays down that “Everyone has the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”.

Article 10 (1) of the European Convention on Human Rights, 1950 says that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises".

The First Amendment to the US Constitution was prominent in developing further the freedom to speech. The Amendment states that, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of people to peaceably assemble, and to petition the government for the redress to grievances”.

Through this research, efforts have been made to collate and categorize particularly those cases in the recent times; wherein the cartoonists and comedians were brought to justice because “someone” had a problem with their expression. It is not happening in India alone. This form of art has been under
the scanner of politicians, police, and conservatives all over the world. Among other things, cartoonists, and comedians in particular have historically touched the sore nerves of politicians and elites because the art form relies upon exaggeration, extrapolation, imaginative distortion, and satirical presentation to highlight the artist’s viewpoint.

It would be examined in this research if the allegations against the cartoonists and comedians were levelled because the accusers were in fact wearing their hearts on their sleeves and were rather unreasonably sensitive against the tacit criticism hinted by the humour. More importantly, if those allegations and litigation could in fact be completely avoided if the accusers acted in a reasonable and forgiving manner. It is in this context the role of judiciary is going to be of paramount significance in the coming times when intolerance and egos have risen to the proportions of being divisive and hurtful to communities and democracy. The said research is conducted with the help of the recent judgments of Supreme Court as well as the published literature on the subject matter.

Is drawing a Cartoon or Performing a Comic entertainment?

Traditionally, over the past three or four centuries, comedy and cartoons are accepted by elites and masses as the acceptable forms of “entertaining expressions” in print, performing stage acts, films, TV serials and satire in prose and poetry. Even caricatures, paintings and wordplays of all kinds are included in a broad sense. This art form has been effective in communicating King’s (or Queen’s) fallacies in the face of the authority and the cultured rulers used to accept the criticism in a positive manner and corrected their paths.

In fact, the judiciary and the artists were the only mirrors available for the rulers in time immemorial. A good comic is someone who can impulsively and passionately convey his or her thoughts (reservations, criticism, observation) to the audience\(^9\). Many see comedy and cartoons as the means of entertainment, fun, frolic and of merriment. If comedy and cartoons be conveyed in an apt and descriptive manner, they could turn out to be the most persuasive mode of influencing the so-called “public opinion” and may be enlightening.

Hindrances to Free Speech in the Context of Cartoons and Comedy

A. The Legal Provisions Pertaining to Sedition

In certain conditions, it is well known that the legal provisions to address sedition do impair the fundamental freedom guaranteed to the concerned individual, which were added in the Indian Penal Code in 1870’s, in response to the Wahabi Movement, to suppress the voice of those who were raising their demands against the then British Government. Sedition is cited in the Indian Penal Code under Section 124 A.

It is stated that “whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or

excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine”  

Over the years, many jurists and scholars have argued against the law of sedition as this law is often seen as a stick in the hands of a blind person. This law, thus, gives unfettered power and control in the hands of government and/or police, who are more likely to impose the devious and horrifying legal actions against any individual trying to question the policies, intentions, and actions of the government.

No wonder, such draconian and unfair legal provisions have been struck out by UK, USA, and several developed democracies in the World. In India, somehow, we seem to be increasing our subscription to the legal provisions on sedition in the recent decades. However, in contrast, the International Law is amply clear which states that any form of disaffection and grave criticism of the government is protected form of expression. In fact, that observation has triggered a wave of taking a fresh look at sedition-related laws in India by jurists and journalists. This project, too, is influenced by the recent actions taken against cartoonists and comedians.

B. The Legal Provisions Pertaining to Contempt of Court, 1971

The Contempt of Courts Act, 1971 is a British colonial legislation that has long outlived its purpose and serves as a hindrance to free speech and makes the judiciary less susceptible to criticism and objections. The Act is designed to define and limit the powers of the Courts in punishing the offender for its contempt. Criminal contempt is defined under Section 2 (c) of the Contempt of Courts Act, 1971. Section 2 (c) defined criminal contempt as publication, whether by words, spoken or written, or by signs and visible representations, or otherwise of any matter or doing of any act which

1. scandalises or tends to scandalise, or lowers or tends to lower the authority of any court,
2. prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding and

13. Supra at 12
3. interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. However, Section 3 categorically states that “innocent publication and distribution of any matter is not contempt”. Section 5 of the Act also states that “no person shall be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided”.

C. Regulatory Censorship

Another way of regulating the free speech is by way of censorship. The concept of censorship is a part and parcel of the Entertainment Law. Stricto sensu censorship refers to the state’s power to “suppress in advance of publication”. The censorship is thus “any attempt by the government by passing a law, or, by an order by a judge, or any effort by an executive or regulatory agency to prevent someone from publishing”.

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17. Id
20. *Burstyn vs. Wilson*, 343 U.S. 495 (1952). The Supreme Court of the United States first ruled that film constituted a form of expression entitled to First Amendment protection. In that decision, the Judges ruled that the First Amendment prohibited the censoring of the movie “The Miracle as Sacrilegious”.
24. Article 13 (2) of the American Convention on Human Right states that the exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.
of a statute is an infringement on the free speech”.

The law of censorship derives much of its value from the aspect of “obscenity” and “vulgarity”. The Merriam Webster Dictionary defines obscenity as, “something being disgusting to the senses and abhorring to the moral values and virtues”. Vulgarity is defined as being “morally crude and undeveloped”.

In the renowned case of Regina v. Hicklin in 1868, Justice Cockburn laid down the test to determine obscenity: “Whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands publication of this sort may fall and which instils in the young minds thoughts of impure and libidinous character”.

What publication shall be obscene and what falls within the permitted limit was held in the case of Miller v. California. The case laid down that what matter is obscene and what matter is not decided based on “contemporary community interest test”. The test is based on an “average person, applying contemporary adult community standards”. Any matter “lacking serious literary, artistic, political, or scientific value” comes within the purview of obscenity.

The Indian judiciary too has, time and again, upheld the freedom guaranteed by the Constitution to the citizens over the censorship laws that impairs the expression, opinions, and thoughts of an individual. Two particularly important and significant cases should be mentioned in this regard:

1. S. Rangarajan v. P. Jagjivan Ram: In this famous and landmark judgment, the Supreme Court held that, “the freedom of expression is Constitutionally protected and cannot be held ransom by the intolerance of the people. The restrictions imposed on Article 19 (1) (a) should be necessary and not based on quicksand of convenience of expediency. Open criticism of the government policies and operations cannot be a ground for restricting the right”.

2. Anand Patwardhan v. Union of India: Taking a liberal view, the Bombay High Court held that, “the filmmaker in this case, and an individual in general, may project his or her views and message which may not be approved by the majority. But he has a right to ‘think out’ and put the counter appeals to reasons. The State cannot prevent open discussion and expression, however hateful it might be”.

Significance of Article 19 for Protecting the Rights of Cartoonists and Comedians

27. Id.
Article 19 of the Constitution of India states that all citizens of India shall have the following rights:

a) Freedom of speech and expression,
b) Freedom to assemble peacefully and without arms,
c) Freedom to form associations, unions, or cooperative societies,
d) Freedom to move freely throughout the territory of India,
e) Freedom to reside and settle in any part of India,
f) Sub-clause omitted by 44th Amendment Act, 1978, and
g) Freedom to practise any profession, or to carry any trade, occupation, or business.

The Supreme Court in the case of Shreya Singhal v. Union of India32 viewed that Article 19 is paramount in the Indian Constitution and edifice of the Constitution. All the purported restrictions that are imposed should be construed narrowly so as to restrict the imposition of the reasonable restrictions to only those cases which are necessary. “Freedom of speech and expression envisages changes in the composition of the legislature and executive and must be preserved. Public criticism is necessary for the working of the institutions and thus the right requires the free flow of ideas and opinions essential to sustain the collective life of the citizenry”.33

Article 19 is the crux of the Indian Constitution. It includes discussion, advocacy, and incitement. Mere discussion and advocacy is the soul of democracy, and it shall be subject to restrictions only when it leads to incitement.34

The case of Devidas Tuljapurkar vs. State of Maharashtra and Ors35 is an interesting case to highlight the significance of Article 19 in the Indian Constitution where Justice Dipak Misra has held that, “Article 19 (1) (a) and Article 19 (2) should be read with the words liberty of thought, expression, belief, faith and worship of the Preamble”.

Along with the freedom envisaged under Article 19 (1) (a), it is important to visit Article 19 (1) (g), which talks about a citizen’s freedom to carry on any profession, or to carry any trade, occupation, or business. Bearing this Article in mind, the researcher opines that expressing one’s opinion in the form of cartoons and caricature as well as hosting comedy gigs forms a part of Article 19 (1) (g) in choosing one’s vocation and occupation. Thus, putting a ban, restriction, or any kind of impediment on artists engaged in such activities, shall not only violate their freedom to speech and expression, but also lead to violation of their right to choose and carry profession and occupation.

Case Study 1: Kunal Kamra Case:

Kunal Kamra is an Indian stand-up comedian known for his observational comedy who has till date performed numerous shows and gigs in India and abroad. His jokes are mainly political, targeting the rightist ideologies and the ruling party often. Kamra’s style of

32. Singhal v Union of India [2015] 5 SCC.
33. Id
34. Id
35. Tuljapurkar v State of Maharashtra [2015] 6 SCC.
comedy is majorly satire, which can be defined as a “genre of performing and literary art which uses the methods of shaming, abusing, and mocking with the purpose of ridiculing the subject of the satire to improvement”\textsuperscript{36}.

Kunal Kamra has been in the news since a long time. His content is often termed as “anti-national”, against the interest of the nation and particularly pinned for his stance against the government from time to time\textsuperscript{37}. Kamra is seen as a being a strong critique of the working of the wings of the democracy. Apart from pointing fingers at the Union executive, Kamra has also voiced his opinion against the working of the Union Parliament in 2016 and recently stirred fire when he was seen tweeting and making jokes on the Union judiciary.

However, this is not the first time that Kunal Kamra will be facing the heat. In a recent incident of January 2020, Kamra was banned from flying the indigo airlines followed by SpiceJet and Go Air after he was seen misbehaving and ill-treating the celebrity anchor Arnab Goswami\textsuperscript{38, 39}. On the same day, government owned Air India banned him indefinitely.

The various tweets by Kamra that were taken cognizance of by the Attorney General and the Supreme Court were as follows:\textsuperscript{44}

1. “The Supreme Court of this country is the most Supreme joke of this country...”

2. “DY Chandrachud is a flight attendant serving champagne to first class passengers after they’re fast tracked through, while commoners don’t know if they’ll ever be boarded or seated, let alone served. *Justice*”

\textsuperscript{36} Cambridge Dictionary, dictionary.cambridge.org/dictionary/english/satire, (accessed 22 December 2020)


\textsuperscript{38} The Hindu on 28 January 2020.

\textsuperscript{39} Pranav Mukul, Indian Express on February 28, 2020

\textsuperscript{40} Shrirang Katneshwarkar and Others v. Kunal Kamra\textsuperscript{40}. After the Republic TV editor in-chief Arnab Goswami was granted bail by the Supreme Court on 11\textsuperscript{th} November 2020\textsuperscript{41} even as thousands of undertrial prisoners wait for their fate to turn, Kamra tweeted a series of tweets that were seen as derogatory towards the apex Court. Around eight people wanted the Attorney General to give his consent for initiating the contempt proceedings against Kamra for his tweets derogatory to the Supreme Court. Responding to the series of requests, the Attorney General gave his consent to initiate criminal contempt action against Kamra for his tweets. The Attorney General was seen responding that the comedian’s tweets were not only bad in taste but also it also crossed the line between humour and contempt\textsuperscript{43}.

The issue at hand pertains to the case of Shrirang Katneshwarkar and Others v. Kunal Kamra\textsuperscript{40}. After the Republic TV editor in-chief Arnab Goswami was granted bail by the Supreme Court on 11\textsuperscript{th} November 2020\textsuperscript{41} even as thousands of undertrial prisoners wait for their fate to turn, Kamra tweeted a series of tweets that were seen as derogatory towards the apex Court. Around eight people wanted the Attorney General to give his consent for initiating the contempt proceedings against Kamra for his tweets derogatory to the Supreme Court. Responding to the series of requests, the Attorney General gave his consent to initiate criminal contempt action against Kamra for his tweets. The Attorney General was seen responding that the comedian’s tweets were not only bad in taste but also it also crossed the line between humour and contempt\textsuperscript{43}.

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While filing of the suit, the petitioners have said that the accused Kamra has a following of 1.7 million people on twitter. The said tweets were seen by many and were also retweeted and thus it shall attract provisions of Section 2 (c) (i) of the Contempt of Courts Act, 1971. However, it should be noted that in doing so, neither has the Attorney General nor the Supreme Court consider the ramifications and consequences of their actions.

It is observed by many that laughter and comedy happen when there is a match and alignment between the comic and his audience. There is a cultural homogeneity between the content of the comic and the participation from his subject. Keeping this argument in mind, if Kamra’s tweets and jokes taking a dig at the working of the Supreme Court generates laughter in the minds of his audience, it is a symbol of cultural connection and alignment between the comic and his audience. If there is no alignment, the jokes shall remain harmless. However, there is more to this argument.

The Court by taking up this issue of contempt is feared for being the final authority of humour. By allowing such contempt proceedings to take place, the Supreme Court has established itself as the final dictator of what is humour and what is not. The entire jurisprudence on the realm of free speech is that it should not be the mandate of the Court. However, by taking such harsh and critical steps, the Supreme Court is on the path of deviating from this position. The Court is not anymore, the final authority because of what it says and does, but rather because of what others say and do and perceive as derogatory.

Another highly problematic issue in this case is the correlation between Article 19 (2), which places certain reasonable restrictions and Article 19 (1) (a) of the Constitution, which are the fundamental right guaranteed by the Indian Constitution to freedom of speech and expression. By initiating such contempt actions, the Supreme Court has given a higher value and more importance to the restrictions on the individual’s fundamental rights than the rights guaranteed themselves. From the bare reading of Article 19 (2), what amounts to reasonable restriction is left open to the Court to decide.

It is the paramount duty and role of the Court, being the guardian of the Constitution and the fundamental rights of all to uphold the tenets of the Constitution and decide what shall amount to the reasonable restrictions. The Court being the highest Court on record must be impartial and unbiased. However, in almost all the Contempt of Court cases the Court being the aggrieved party, there are questions raised upon its impartiality.

A very foundational and complex question needs to be answered here. “What differentiates criticising the decision of the judiciary from shaking the entire edifice and

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45 Stand-up as interaction: Performance and Audience in Comedy Venues Jason Rutter, University of Saford Institute for Social Research Department of Sociology, Abstract p1-2
46 Comments by the author inspired from the reply affidavit filed by Kunal Kamra in the contempt of Court case. See also, supra 44
48 Navroz Seervai for The Wire; Opinion-Editorial on In Re Prashant Bhushan and Anr, 03 August, 2020
foundation of the third pillar of the Indian democracy?” Dissent is seen as a force of strengthening the democracy. Disagreeing with the working of the Supreme Court and commenting on it in a satirical form does not diminish or tarnish its image, rather it may help in reforming it.

As celebrated columnist Anvay Shukla writes for “The Wire” and the author quotes, “Calling the Supreme Court a joke is just a joke, your honour, unless you feel in your heart of hearts that it is more than that – that it could be a terrible truth – in which case it is not the court’s honour which is at work here, but a guilty conscience”.

Criticism of the Court without any malice, ill-will and bad motive should not amount to contempt. Does the series of tweet made by a comedian pose such a great threat to the image of the highest legal institution in the country? Instead of focusing on the tweets by Kamra, the Court, should focus on matters of grave concern that are prevalent in the country and do not find any mention in the registry of the Court.

BR Ambedkar during the Constituent debate had said, and I quote him, “I have often in the course of my practice told the presiding judge in very emphatic terms that I am bound to obey his judgment, but I am not bound to respect it. That is the liberty that every lawyer enjoys in telling the judge that his judgment is wrong, and I am not prepared to give up that liberty”.

The Kerala High Court, while assessing and evaluating if Justice V.R. Krishna Iyer should be held guilty of contempt of Court for his speech delivered at a symposium in 1981 held that, “criticism of courts, within permissible limits, should not be taken to lower the authority of the courts or to scandalise them. In a democratic age, no institution should be beyond the reach of honest criticism. The courts are no exception. While commenting on the functioning of courts, on the working of the judicial machinery, adverse and unpalatable criticism is as likely an offer of bouquets for the excellence of its performance. The courts should not feel elated by compliments offered or be embarrassed by adverse criticisms”.

The judiciary in this country can be criticized and ousted upon only by public outcry since it is immune to criticism from the legislature.
and the executive. Therefore, the power to initiate contempt under the Contempt of Courts Act, 1971, should be sparingly and carefully used.

The European Court on Human Rights in the case of Morice v. France has held that, “the speech of judges, unlike that of lawyers, is received as the expression of an objective assessment which commits not only the person expressing himself, but also, through him, the entire justice system”. Therefore, it is important to understand that the role of the judges and that of the judiciary is of paramount importance in upholding the rights of an individual against the State since the entire edifice of justice rests in their hand.

Case Study 2: Arrest of Cartoonist Aseem Trivedi: (Sanskar Marathe v. State of Maharashtra and Ors)

“The appropriateness of the cartoon should be judged by the public, not the police.”

R.K. Laxman, the celebrated cartoonist of the country, had drawn two cartoons depicting the state of Indian people before and after the elections and a satirical cartoon of former Prime Minister Indira Gandhi after she managed to win the 1978 elections, even after imposing the emergency throughout the country and despite all the negativity around. Cartoons have since time immemorial stood the test of social and political awareness and standing against despotic tendencies.

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58 Statement by the campaign group, “India Against Corruption”, of which Aseem Trivedi was an activist.
59 R.K. Laxman, the celebrated cartoonist of the country, had drawn two cartoons depicting the state of Indian people before and after the elections and a satirical cartoon of former Prime Minister Indira Gandhi after she managed to win the 1978 elections, even after imposing the emergency throughout the country and despite all the negativity around. Cartoons have since time immemorial stood the test of social and political awareness and standing against despotic tendencies.
60 Id.
The use of cartoon to politically educate and spread awareness about the happenings in the country is not new. Be it the cartoons of R.K. Laxman or be it French satirical magazine Charlie Hebdo’s cartoon instigating animosity against any religion, it cannot be denied that cartoons were seen as a means to educate the mass and make them more aware of the happenings in the country by graphically picturising the events.

In the case of Sanskar Marathe v. State of Maharashtra and Ors, popularly known as the “Aseem Trivedi arrest case”, the Bombay High Court differentiated between strong criticism and the feeling of disloyalty towards the nation and the State. The Court observed that, “commenting in strong terms against the working of the government or its agencies, so as to highlight the conditions of the people or to be outspoken against any law enacted by the Parliament, without inciting the feelings of enmity and violence cannot be termed as disloyalty towards the nation”.

It was contended that the cartoons of Aseem Trivedi not only defamed Parliament, the Constitution of India and the Ashok Emblem but also tried to spread hatred and disrespect against the Government by publishing the said cartoons on ‘India Against Corruption” website, which not only amounts to insult under the National Emblems Act but also amounts to serious act of sedition. One of the cartoons drawn by Trivedi showed the Parliament building as a lavatory with flies buzzing around. Upon his arrest, strong statement came from across the country. Justice Markandey Katju, the then Head of the Press Council of India had said that politicians are not immune from the criticism of those who elect them and should learn to tolerate criticism.

The Court further observed that cartoons and caricatures are visual representations that have an element of wit and humour in them if seen from the correct angle and a liberal spectrum. Looking at the cartoons drawn by cartoonist Trivedi, the Court held that there was no wit or humour in the cartoons, neither are they powerful enough to incite any kind of hate and disloyalty towards the government. The freedom of speech and expression available to the respondent Trivedi to voice against the corruption by way of his cartoons cannot be encroached upon.

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The Court while dealing in this case laid reliance on the case of Kedarnath Singh vs State of Bihar\(^6\), wherein the Court had decided how far the offence of sedition is consistent with the right to freedom of speech and expression. The Court in this case had held that, “strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section.

Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal”. Using of harsh and criticising words against the government is not the same as incitement to feeling of disloyalty towards the government. Another important observation of the Court in this case was that “A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder”. The Court thus disposed of the petition in this case and dictated that there is no case formed against Trivedi under the law of sedition.

**Limitation of the Prevailing Legal Framework in the light of Free Speech and Expression**

No right conferred is absolute in its real sense. Every right has some inherent restrictions. The ideologists supporting this view opine that the freedom of speech and expression, when unfettered, demonises the democracy. The basic idea of a democracy is doubted when people are allowed to use their rights arbitrarily. This is where the judiciary, the protector of the rights of people shall step in to help those who are deprived of their right to speak and openly convey their beliefs.

It is important to quote Kenneth A. Paulson\(^6\) here, who in his very dominant article on “Comedy and Freedom of Speech” had raised a very fundamental question on the actions by the government, and more particularly by the majority to curb the use of comedy as a mode of expression. In his article, Paulson asks, and I quote, “If we’re willing to accept some restrictions on speech so we won’t feel unsafe, how willing are we to curtail speech if it simply makes us uncomfortable?”.

In this regards, Article 19 imposes reasonable restrictions on the freedom of speech and expression. Article 19 (1) (a) is restricted by Article 19 (2) on the grounds of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, morality or decency, contempt of Court, defamation, and incitement to violence.

A. **Limitation of the Sedition Law**

Dissent and criticism are two important roots embedded in the right to freedom of speech and expression under the Constitution. The law of sedition is a rather draconian and distasteful law. Giving unfettered and


\(^6\) Kenneth A. Paulson, “Comedy and Freedom of Speech”, A Survey Conducted by the First Amendment Centre, and University of Connecticut with the US Comedy Arts Festival’ [2002], 1 University of Connecticut with the US Comedy Arts Festival 6-8
uncontrolled powers in the hands of the executive is dangerous. The father of the nation, Mohandas Karamchand Gandhi in his article for a local magazine had called the sedition law the “Prince” among the IPC Sections which suppressed the citizens’ liberty to free speech 68.

In the year 1898, the law on sedition was made stricter by including various other facets of contempt, hate speech, disloyal and dis-affectionate statements towards the government etc. It carries a punishment of imprisonment of life, or imprisonment extending up to three years and fine. The offence is non-bailable. The opinion that people have in a free and liberal state thus comes at a price of imprisonment and payment of fine.

The content of the Section is, however, incredibly open, and vague and subject to various interpretation, making it difficult to approach the law with a straight view. While such charges are rare to lead to a conviction, the arrest and the imposition of such charge is enough to harass, intimidate and challenge the authority of the public opinion 69.

Words alone are not enough for the Section of sedition to be imposed. A crucial ingredient to the imposition of the charges of sedition is incitement to violence. The National Crime Records Bureau data for 2019 showed that the cases for sedition have increased, however, the conviction rate is at a 3% 70.

Thus, although the law of sedition seems safeguard the government to curb unwarranted activities, it is surely seen that the law of sedition has not lived to fulfil its very purpose. The law cannot be used as an excuse to suppress free speech and liberty of a citizen to express its opinions and views, no matter however critical and harsh they may be against the working of the government and its agencies.

B. Limitation of the Contempt of Courts Act, 1971

Like the law of sedition, the Contempt of Courts Act, 1971 too is a British colonial law that has very well outlived its purpose. The Act is meant to uphold the dignity and the respect for the esteemed institution of the judiciary of the country. However, in the recent years, it is seen that the Act is used to initiate motions against those who vent their criticism and discontent against the functioning of the judiciary. Has the power given to the Courts been used as a medium of oppression is often a question left to be answered!

Oswald in his treatise Contempt of Court, defines contempt as "an offence more or less directed against the Sovereign himself, as the fountainhead of law and justice or against his


69. Reema Omer, India’s sedition law is just another colonial hangover and has no place in a democracy, Scroll, scroll.in/article/952017/indias-sedition-law-is-just-another-colonial-hangover-and-has-no-place-in-a-democracy, (accessed 12 December 2020)

Palace, where justice was administered”\(^{71}\). Thus, the true meaning of “contempt”, according to Oswald is the disrespect to the institution of law, and not to the individual judge or law interpreter.

The criminal contempt of Court poses certain inherent problems. Firstly, it is solely dependent upon the opinion and the beliefs of the judge with regards to the matter in issue. Secondly, the basic principle of natural justice is violated in such proceedings. The Court, being the aggrieved party, itself initiates the proceedings of contempt against the accused, thus violating the principles of “nemo debet esse judex in propria causa”, which means that “no man shall be a judge in his own cause”. Most important, the Contempt of Courts Act, 1971 empowers the Court to be the final deciding authority in the issue. There is no provision of appeal in cases where the contempt proceedings are initiated by the Supreme Court.

In the case of Regina v. Commissioner of Police of the Metropolis, Ex Parte, Justice Blackburn held that, “no criticism of a judgment, however vigorous, can amount to contempt of court, provided it keeps within the limits of reasonable courtesy and good faith”\(^{72}\).

Justice Beg in the Mulgaonkar case\(^{74}\) held that, “the judiciary cannot be immune from criticism. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made of bonafide concern for improvement”.

Thus, the Contempt of Court Act, 1971 is far off from its utility and remains an anti-thesis to democracy if not used wisely. The Supreme Court and the High Courts, being the Constitutional Courts, command a high stature and should not be let down by public criticism. They are institutions of high value and should strive to maintain its respect among the public by upholding the Constitution and through quality judgments and by showing its unbiased and impartial approach towards disposing off the cases and not by being oppressive and opaque to criticism.

The law of contempt should be sparingly used only when the actions of the accused are such that it truly tarnishes the image of the great Constitutional set up of the Courts in the eyes of the public. It is to be remembered that the law of contempt is not to protect the judges but to protect the image of the institution from scandalous and unfounded remarks.

**Role of the Judiciary**

The judiciary in this regard has time and again stepped in to demarcate and classify what shall be the limit of one’s exercise of free speech\(^{75}\). The Constitution of India expressly says that the restrictions mentioned under Article 19 are to be “reasonable” and “not arbitrary” and mindless restrictions.

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\(^{72}\) Regina v Commissioner of Police of the Metropolis [1968] Ex Parte, 2 1968, 2 Q B 150.

\(^{73}\) Donde, *supra* note 40

\(^{74}\) In Re: Mulgaonkar v Unknown [1978] 3 SCR 162.

\(^{75}\) Paul Sturges, *Limits to Freedom of Expression? considerations arising from the Danish cartoons affair* [2006]) 32(3) IFLA JOURNAL 181–188
To illustrate a case, one might have to recall the brilliant cartoon by cartoonist R.K. Laxman, “the common man”, through which the cartoonist portrayed his ideas satirically and recreated the political figures and their draconian acts. However, never was the cartoonist held responsible and accountable for his caricatures. Even in that dark period of the Emergency the learned judges did not hold the cartoonist for contempt.

The Supreme Court in the case of Balwant Singh v. State of Punjab held that “The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case”.

The Supreme Court has also held in Brij Bhushan and Ors v. State of Delhi that “it must be recognized that freedom of speech and expressions is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts. It must also be recognised that free political discussion is essential for the proper functioning of a democratic government”.

The Supreme Court Bench for the first time in the case of V.G. Row vs State of Madras, headed by Chief Justice Shashtri observed the following for assessing the “reasonableness” of any restriction. He held that, “For purpose of deciding the reasonableness of the restriction, it is important that the right claimed against such a restriction should be a Fundamental Right and the restriction must be one as contemplated under Article 19 (2) to (6) and the reasonableness of a restriction shall be assessed according to the meaning of the legislature and the Court shall not be misguided by mere appearance of the legislature.

The Supreme Court has re-iterated that the freedom of speech and expression is a private right. It also held in the case of Sharad J. Rao v Subhash Desai and Ors, that the freedom of speech and expression of an individual should not be interfered in for whatsoever purpose, barring the reasonable restrictions provided by the Constitution.

Another significant judgment of the Supreme Court is the Papanasam Labour Union vs Madras Coats Ltd, where the Supreme Court held that “reasonableness” of any statute which is imposing restrictions upon the subjects shall adhere to the following principles:

1. The restriction imposed should not be arbitrary and of excessive nature and go beyond the reasonable and permissible limits.

76 Aryan Rai, Sanitary Panels, Contempt and Arrest; A Brief History of Political Cartoons in India, LiveWire, https://livewire.thewire.in/politics/sanitary-panels-armab-goswami-political-cartoons-history/, (last accessed 16 August 2021)
78. Brij Bhushan and Ors v State of Delhi [1950] 26.05.1950 SC.
2. There must be a direct and proximate relation between the restriction imposed and the object sought to be achieved.

3. The restrictions imposed shall be interpreted subjectively from time to time according to the facts of each case. It is not necessary to strictly interpret the restriction.

4. The social control as envisaged under Article 19 should be effectuated by the restrictions imposed on the Fundamental Rights.

In Sakal v. Union of India\(^\text{82}\), the Supreme Court observed that Courts must be ever vigilant in guarding the most precious of all the freedoms guaranteed by the Constitution i.e., freedom of expression and speech.

The Delhi High Court in the very recent case of Ashutosh Dubey v Netflix, Inc and Ors\(^\text{83}\), held that “the very essence of democracy is that a creative artist is given the liberty to project the picture of the society in a manner he perceives. One of the prime forms of exposing the ills of the society is by portraying a satirical picture of the same. Stand-up comedians perform that very purpose. In their portrayal they use satire and exaggerate the ills to an extent that it becomes a ridicule. In the humorous portrayal of the ills of the society the stand-up comedians use satire”.

**Summary and Conclusion**

Free speech plays a crucial role in the working of any democracy wherein every citizen has the basic right enshrined under the Constitution to express his/her ideas, beliefs, and schemes of action through various means and modes. It is well known that the fundamental right to “free speech” is particularly indispensable in a democracy because it facilitates the communication and dissemination of diverse ideas and thus helps in enjoying personal autonomy as well. Freedom of speech is primarily held to be a universal right which is guaranteed across the world.

Article 19 of the Universal Declaration of Human Rights, Article 18 (1) of the International Covenant on Civil and Political Rights, 1966, Article 10 (1) of the European Convention on Human Rights, 1950 and the First Amendment to the US Constitution, all speak and highlight the importance of maintaining free speech in a democratic set-up.

Since time immemorial, Comedy and cartoons are accepted by elites and masses as the acceptable forms of “entertaining expressions” in print, performing stage acts, films, TV serials and satire in prose and poetry. If comedy and cartoons be conveyed in an apt and descriptive manner, they could turn out to be the most persuasive mode of influencing the so-called “public opinion” and may be enlightening. In fact, this dimension and power of cartoons and comedy as art and entertainment could be seen by the rulers as the inconvenient forms of expression!

The drawing of cartoons and act of enacting comedy is subject to certain restrictions to which the cartoonist or the comedian has to oblige. One such restriction is imposed by the provisions of sedition under the Indian

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\(^{82}\) Sakal v Union of India [1962] 3 SCR 842.

Penal Code. However, over the years, many jurists and scholars have argued against the law of sedition as this law is often seen as a stick in the hands of a blind person. This law gives unfettered power and control in the hands of government and/or police, who, in many instances, are seen misusing it. The other restriction which a cartoonist or a comedian should bear in mind is the law on Contempt of Court, which protects the dignity and image of the Courts in India from malicious and scandalous attacks on its working and functioning.

Article 19 is the crux of the Indian Constitution and particularly important when it comes to a cartoonist or a comedian presenting his or her idea. In short, it includes discussion, advocacy, and incitement. Mere discussion and advocacy is the soul of democracy, and it shall be subject to restrictions only when it leads to incitement. The cartoonist and the comedian is protected under two sub-clauses of Article 19. The first sub-clause is 1 (a) which protects the right to speech and expression and the other sub-clause is 1 (b) that protects the rights to carry on any profession, trade, or occupation.

By reading the entire series of cases highlighted in the article, it can be concluded that time and again, the judiciary has stepped up to protect the fundamental rights of citizen to freedom of speech and expression, be it expressing one’s opinion and belief through the medium of cartoons or through comic. The judiciary has been the protector for many who were charged under the draconian laws and provisions of sedition and Contempt of Court for opining their views, that were seen by the bureaucrats and the politicians as being against their own interests. The author truly hopes and expects that the judiciary, in the present day adheres to its earlier rulings and protects the fundamental rights of all individuals to express themselves, thus saving and protecting the democracy of the country.

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