CONTEMPT OF SCANDALISING THE COURT: AN ANALYSIS OF FREE SPEECH

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ABSTRACT

This article centers on and around the contradiction between free speech and the contempt of scandalising the courts. It studies the history of the laws of contempt of courts across the nation-states such as the United Kingdom, the United States of America and Union of India. This article is founded on 35 authoritative references from scholars, judges and lawyers. Evolution of the law of contempt visa vis struggle of free speech has been depicted. An attempt has been made so far to answer whether judiciary is accountable to specify resentment and discontentment of masses of people who still are firm in faith and trust on the impartiality of judiciary. The English as well as the American experience of contempt of scandalising the courts has been discussed to have a comparative study on the Indian law and practice of contempt of scandalization of courts. It is argued here that judiciary being an organ of state adheres to protect the ideology and policies propelled by the state. Empowerment of people implies constructive criticism of the state, hence judiciary falls prey thereto. In the Indian context, three case studies has been made. These are (i) EMS Namboodiripad v. T. N. Nambiar,1971, (ii) P.N. Duda v. V. P. Shiv Shankar, 1988, and Vincent Panikulangar v. V.R. Krishna Iyer. This article finds how judiciary has offered differential treatments to different alleged contemnors. The Contempt of Courts Act 1926, the Contempt of Courts Act 1952 and the Contempt of Courts Act 1971 have been discussed. The objective of this article is to alert the people as well as the students of law to act judiciously and wisely so as to hold high the dignity and the majesty of the court. At the same time, free speech has to be let live with its head high and without fear.

Keywords: defamation, contempt of court, scandalising the court, free speech

Introduction

Who will watch the watchman? Peoples' representatives are answerable at least to their voters. Executive actions are questioned within the framework of the constitutional scheme of things. But, judiciary of the higher and the highest echelons enjoy immunity. In the Indian context, judges are not elected. Under no constitutional provisions are they obliged to specify the resentment and discontentment of the masses of people. Although the three organs of the state have their respective domain of functioning, the scheme of separation of power is never seen to have the organs as water-tight compartments. Overlapping is often and numerously witnessed. Being the judicial branch of the state, judiciary breathes from the same climate of the politics which is adhered to by the state. Scholars of different colours are of the opinion that Supreme Court is a political institution and it has been behaving politically on many an occasion. Even it is witnessed that all the three organs of the state have been living in the same symbiotic gland, feeding each other and being fed by each other. Yes, on some occasions, the Court is found contradicting state-actions and it thus reflects the inner-contradiction between state and judiciary. This is what is said that the Supreme Court is in the quest of indentity[1]. Lately though, the Supreme Court of India made out a ruling that the President of India can't keep bills passed by state assemblies and sent for presidential assent pending longer than necessary. In the matter of State of Tamil Nadu v. Governor of Tamil Nadu, the Court preserved the legislative function of state assemblies and affirmed the fundamental principle of representative democracy and it ruled that inaction or procedural delays must not stand in the way of legislative outcomes[2]. The contradiction between the Government of Tamil Nadu and the Governor of Tamil Nadu is purely a political issue. There is a scholarly statement that when issues are political, the Court refuses to interfere and when the Court interfere, the issue becomes political. The proposition in the latter part of the statement is evidently established to be true and the former portion thereof is negated as the Court consciously took on a deeply political issue involving the constitutional scheme of federalism. But this identity of the Court is not even and it is often selective. In regard to preventive detentions and workers' right to have a say in the mater of policies formulated by the managements of industries, the Court is said to have dismayed the public opinions and it has practically invited wrath from public domain. Therefore, under these circumstances, the public criticism of top judiciary is obvious, but the crux of matter is whether any public criticism involving the Court stand out to be scandalous or scandalising or defamatory is to be tested in this essay as the Court on some occasions has invited the provisions of contempt arising out of scandalising the Court. It is also

to be tested whether the Court is seen selective in punishing and penalizing the contemnors.

Peoples' criticism of state and hence of the Court happens to be an important part of empowerment of people, which is the sole moto of a constitutional democracy. Article 38(1) of the Constitution of India directs the state to strive to promote welfare of people and Article 3892) thereof obliges the state to strive to minimize the perpetuating inequalities in income and to eliminate inequalities in status, facilities and opportunities. This is in accordance with the Constitution (44th Amendment) Act, 1978. Unfortunately, the state is not found demonstrating any such adherence thereto. During the early 1990s, India's per capita gross domestic product was higher and growing faster than that of Bangladesh. Child mortality rate in India was lower than that in Bangladesh. It was expected then that this gap would widen further. But, its opposite is visible now. By the year 2011, open defecation is found non-existent in Bangladesh whereas it is still rampant in India. 'India has been neatly leap-frogged'.[3] In the matter of 'fraternity', the preambular pledge, the communal pot is evidently seen boiling[4] (in India). It is as if the state is absent. Therefore, the role of the Court is obviously placed under the public scanner for scrutiny as the people have constitutional as well as moral right and duty to watch the watchman.

Scandalising the Court defined

What is contempt? Article 19(1) (a), Constitution of India, affirms that all citizens shall have right to freedom of speech and expression. The clause 2 thereto imposes reasonable restrictions on the clause 1(a). Contempt of court is one such reasonable restrictions. Contempt is of two kinds, criminal contempt and civil contempt. Scandalising the court falls under the category of criminal contempt. Supreme Court of India has authority under Article 129 to fine and imprison for contempt of itself. Under Article 215, every High Court is empowered to fine and punish for contempt of itself within its territorial jurisdiction. The powers invested in the Courts under Articles 129 and 215 are summary powers.[5] The objective rationale behind the power to punish for contempt of court is not meant to protect judges personally, but to protect the public themselves from the mischief they will incur if the authority of the tribunal gets impaired.[6] The procedure of the working of these Articles are subject to the provisions of the Contempt of Courts Act, 1971. The law of contempt of court developed over centuries (in the U.K.) as a means to curb or prevent the conducts which tends to obstruct, prejudice or abuse the administration of justice.[7] What sort of statements or conduct is treated as prejudicial? A quest

for the answer may be attempted in reading Shakespear's Hamlet.

Hamlet explores the deeper meaning of the word 'contempt'. The drama depicts the state of affairs spreading across Denmark wherein it is found that the god in man has succumbed to the beast. The god in man is depicted as 'reason' and the beast is represented as 'folly'. Reason is the state of human intellect and folly implies the absence of mind. The play Hamlet is thematically staged on the conflict between reason and folly. That is explicitly the conflict between thinking and mindlessness.[8] The Oxford English Dictionary defines the word 'folly' as the quality of state of being foolish, deficient in understanding, want of good sense and weakness or derangement of mind or unwise conduct. A fool is described as one who acts and behaves stupidly, and one who is a silly person, a simpleton and one who is deficient in judgement or of sense. Hamlet the protagonist is depicted as being deeply bothered about the then existing affairs in his kingdom where the custom of the day was breaking down the pales and forts of reason. Hamlet an embodiment of reason and mind speaks of and contemplates about reason. In Biblical sense, folly representing the fool is indicative of the persons who are vicious or impious. So, folly lacks piousness. On the contrary, according to Erasmus's "The Praise of the Folly"[9], all mankind is foolish. Here, Erasmus's "The Praise of Folly" is a sixteenth century bold satire which does poke fun at the foolishness of mankind. Desiderius Erasmus has made out a distinction between the folly of the common men and the folly of the pious men. In this context, since judges are honoured as virtuous, hence pious, any criticism involving them is taken for being vicious and impious. Under the lens of "The Praise for Folly, since all humans are foolish meaning having follies, the folly of judges are pious and the folly of the laity the common men is vicious. Hence, criticism of judges' follies is prohibitory since these are pious. Therefore, the contempt of the courts which arises from the act of scandalising the courts ought to be studied in the light of the pious folly of judges who stand above the laity and the contempt is fixed when the pious folly of judges is questioned or brought under satire. Historically, evidently clear is the fact that the law of contempt of courts carries in itself the mandate to protect the majesty of the Court and since judges are themselves a class of people, they protect their class-interest under the said law.

History of Contempt of Scandalising the Court

The origin of the branch of law which is known as 'scandalising the court' is shrouded in antiquity and is described as both 'dubious and controversial'.[10] It was way back in 1765, King

v. Almon was the first case in which Justice Wilmot adjudicated the contempt of scandalising the court. The fact of the case was that a publisher in Piccadilly, London had printed a pamphlet in which it was alleged that the then Chief Justice Mansfield was acting officiously, arbitrarily and illegally. The publisher was hauled up over the coal for the contempt of scandalising the court. The Irish judge Justice Sir Eardley Wilmot in his judgement was of the view that courts would lose all their authority and public would lose their trust in the majesty of the courts, if it were told that judges in their chambers wrote orders and rules corruptly. Although Justice Wilmot's judgement never saw light and was held not be a precedent, the expression 'contempt of scandalising the court' remains in use till date to "keep a blaze of glory around judges". During the middle age in the United Kingdom, divinity was attached to the Monarch and the judges as well as the legislatures were considered adorned with certain divine authority to protect the majesty of the monarch. Hence, it was obvious that judges were enjoying sovereign immunity from public criticism and scrutiny. The history of criminal contempt of court in the United Kingdom is rooted in the era of the Star Chamber. This English court used to sit in the Royal Palace of Westminster during the period between 15th and 17th century. Only those too powerful to be tried in the ordinary common law courts used to be tried by the Star Chamber for crimes such as forgery, perjury, riots, libel and conspiracy. British Parliament abolished the Star Chamber in 1641. This was the era of pre-industrial revolution when industrial revolution was budding and getting matured to bloom in the 18th century. Abolition of the Star Chamber was necessary to accommodate the then upcoming of the system called capitalism. However, capitalism too needed to keep the majesty of the court above questioning from any corner. However, the American history of contempt of courts is largely different from the British experience.

The question here is whether the courts in the United States have inherent power to punish strangers for contempt of scandalising the courts, that too without a jury trial as it used to be a summary trial in the English system. The answer is a mixed response. Several Federal as well as state courts opine that the contempt power of the courts is an inherent power. The Indiana Supreme Court has held it to be an inherent power of the courts and it can't be taken away. Contrary to this, Sir John Fox has conclusively explored from the antiquities of contempt that it was a fallacious doctrine. This is for the reason that it violates the constitutional guarantee of trial by jury and this very inherent power of the courts is not established in the common law by the time the American constitution adopted the guarantee of free speech and expression.[11] The US does not have any specific offense known as 'scandalising the court'. The doctrine of 'clear

and present danger' has been adopted in the US system of law. The said doctrine is meant to assess restrictions on free speech. The restrictions on speech are allowed only when there is any imminent threat to the administration of justice. If a speech has potential to cause harm to the delivery of justice, it can be restricted. The US Supreme Court in Schenk v. United States (1919)[12] came out with the said 'clear and present danger' doctrine to be tested while adjudging the contempt of itself. However, free speech can be restricted depending upon circumstances. Although the offence of scandalising the court became virtually obsolete in 1920s, it got revived in 1928 in the New Statesman case.[13] The phrase 'scandalising the court' is a colourful one and it used to be in use when there was any hostile criticism of a judge as judge.[14] Mr. Justice Black has observed that the power of the courts to try summarily and punish for a criminal contempt is an anomaly in the law.[15] 'Scandalising the court' is otherwise known as 'murmuring against judges'.[16] The founders of the United States derived their concept of law based on their knowledge of the English law and yet they did not find the contempt power to be inherently or primarily judicial. The Federalist Papers evidently suggest that the framers of the US Constitution had not considered the contempt power part of the judicial power enshrined by Article III of the US Constitution. But the Congress got judiciary vested with contempt power through the Judiciary Act of 1789.[17]

Indian Experience

Of the usual course, states enact laws to protect themselves from anything anathema either domestic or external. Judiciary being an organic instrument of state obviously needs protection as a part of the protection for the state. Contempt of court is such a ground on which freedom and liberty of citizens is reasonably (or unreasonably at times) restricted. The law of contempt of court in India has evolved from the British tradition of common law since India had remained a British colony for a period approximately of two hundred years. The first specific enactment concerning contempt of court was the Contempt of Courts Act, 1926. Post-independence, the Contempt of Courts Act, 1952 came out with an expanded empowerment of courts. The Contempt of Courts Act, 1971 is the last and the latest of such incarnations. It is contended that the concept of criminal contempt which arises from scandalising the court is parading between the dignity of their lordship and fundamental rights. The Indian system of law of contempt of scandalising the court is said to have been evolved and refined to have accommodated freedom of speech and expression as envisaged in Article (1)(a). The clause 2 of the said Article outlines the grounds of reasonable restrictions to be imposed on freedom of speech and expression and

it includes contempt of court as well as defamation as one of the prescribed grounds.[18] Currently, contempt of court is dealt with under the necessary provisions of the Contempt of Court Act, 1971. However, the so-called reasonable restrictions on freedom of speech and expression in India reflects the British band of music.[19] As regard to defamation, Bharatiya Nyaya Samhita deals with it under the section 356 which defines defamation as making or publishing any false imputation involving or concerning a person or persons as to cause harm to their reputation through words, signs or through visible representations and doing so must have done with a bad intent.

The language of definition deployed in the Section 2(c) of the Contempt of Court Act,1971 is beautifully evasive.[20] Something is said to be evasive when it avoids giving a direct and clear answer and when it tries to hide the truth or it avoids a difficult situation and when it does not answer a question honestly or straightforwardly. Fali S. Nariman is of the opinion that the Articles 129 and 215 of the Constitution of India do add certain uncertain dimension to the jurisdiction of Supreme Court and the High Courts respectively and the inherent contempt power is left to the (will and pleasure of) judges to define the term 'contempt of scandalising the court'. The origin of this branch of law is shrouded in antiquity and some text books describe it as dubious and controversial.[21] The contempt powers in India today are unnecessarily designed to try and maintain a good public image for the judiciary.[22] "The path of criticism is a public way: the wrongheaded are permeated to err therein; provided the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice, they are immune. Justice is not a cloistered virtue: she must suffer the scrutiny, and respectful, even though outspoken, comments of ordinary men."[23]What Lord Atkin said or intend3d to say may be made out as that the difference between the folly of the pious and the folly of the ordinary man is very thin and the former has to face the scrutiny and the latter must not act in malice. However, the Atkin approach is evidently loaded against free speech. The lesser is the improper motives, the lesser is the chance of being hauled over coals. Even the Atkin approach is not immune from public scrutiny, although it smells a little benevolent. In the matter of the contempt of scandalising the court, the judge happens to be the complainant as well as the judge. That whether a particular folly of an ordinary person is improper has to be determined and decided by the judge. The line so drawn differentiating between a 'destructive criticism' and a 'genuine but trenchant criticism' is so thin that it's very hard to fix penalization. So, it

depends largely on the perception of the judge who is to administer the contempt jurisdiction in the name of the court.

Case Studies

The matter of contempt proceeding against E.M.S. Namboodiripad was an interesting one. It was first initiated in the High Court of Kerala. By the time, the contemnor was the leader of the Communist Party of India (Marxist) as well as the Chief Minister of Kerala. The issue was whether the statements made by the contemnor in a press conference that judges are guided and dominated by class hatred and they serve the interests of the exploiting classes and subject to the influence of the executive amounts to the contempt of scandalising the court.[24] The fact of the matter was that while the contemnor was serving as the Chief Minister of Kerala, he made certain statements publicly in a press conference that judiciary is an instrument of oppression and judges are guided by class-hatred, class-interests and class-prejudices. He further went on saying that judiciary is weighed against workers, peasants and other sections of working classes and the law as well as the system of judiciary serves essentially exploiting classes and even though there is separation of power, judiciary is still subject to influence and pressure from the executive.

The petitioner contended that the contemnor's statements not only constituted the scandalization of courts, but also tended to demolish the dignity and authority of courts and people's confidence in the administration of justice was, too, attempted to be destroyed. Along with, the authority of the law was undermined and the contemnor's statements were an interference with course of justice. On the contrary, it was contended on behalf of the contemnor that the press statement of the respondent, the Chief Minister was only a fair criticism of the judicial administration in regard to reforming the system in conformity with people's long cherished objective of accomplishing a real democratic and egalitarian society which would move along the path of socialism. It was argued that the Chief Minister of Kerala was a leader of a political party which adheres to Marxism and Leninism and it was his duty as a political leader, an outstanding legislator and as the leader of the State Assembly to educate the masses of people in order to bring about reforms in the system of administration of justice. Therefore, the respondent did have any aspersion cast on any particular judgement or on any particular judge and thus, the respondent did not intend to harm or offend the majesty of justice. Hence, the statements made publicly by the respondent did not amount to the contempt of

scandalising the court.

The Bench of the Kerala High Court that decided the Nambiar v. Namboodiripad consisted of three judges named Justice Raman Nayar, Justice Krishnamurthy Iyer and Justice K.K. Mathew. This was a 2:1 split judgement and Justice Mathew dissented. The majority held E.M.S. Namboodiripad guilty of contempt of the High Court of Kerala as well as the courts subordinate to it. As the contemnor did not express his regret for his statements, he was condemned being guilty of scandalising the court. Justice Mathew held that the contemnor was not guilty of contempt and the petition was dismissed. Justice Mathew derived his dissent from various sources upholding the gravity of free speech. Whitney v. California, 1927 is one such source. Justice Louis Brandies penned a very powerful emphasis on the importance of free speech as well as the danger of suppressing dissent. In 1927, some Anita Whitney was convicted her being a member of Communist Labour Party and for her alleged participation in its activities. She was tried under the California Criminal Syndicalism Act, 1919. Syndicallism was a socio-political movement and it pleaded for workers' control of economy and governance through industrial unions. This movement aimed at abolishing capitalism and establishing a worker-controlled social order through direct action and it rejected both the state and political party system. Justice Louis Dembitz Brandies in Whitney v. California said, "Those who won our independence believed that public discussion is a political duty; and that this should be a fundamental principle of the American government. But they knew that the order cannot be secured merely through fear of punishment for its infraction that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion; they eschewed silence coerced by law-the argument of force in its worst form."[25] Justice Mathew took the wisdom from Justice Brandies on free speech and held EMS Namboodiripad not guilty of scandalising the court. Justice Mathew brought his dissent home by referring Zacharia Chafee[26] that the true meaning of free speech is that the most important purpose of society and government is the discovery and spread of truth on subjects of general concern, which is possible only through absolutely unlimited discussion for the fact that once force is thrown into argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest.

Justice Mathew elaborated the reasoning behind his dissent that free speech is the means of interchange of ideas to bring about the cherished changes in political and social set up desired by people and the governing importance of free speech is the essence of social value which ought to have unbridged contents, otherwise, the foundation of self-government would be practically unattainable. Added that free speech concerning public affairs is something more than self-expression which is the essence of self-governance. It was held in Garrison v. State of Luisiana that that political participation of people with its concomitant supremacy of popular will on the basic questions and government's responsibility towards the people is the first postulate of democracy. Justice Brennen in Roth v. the United States held that all ideas having even the slightest redeeming of social importance, which are the unorthodox ideas, even though the ideas are hateful to the prevailing systemic climate, have the full protection under the constitutional scheme of things. Therefore, the speech delivered by EMS Namboodiripad deserves full protection even though it is bitter to the existing legal climate. Justice Mathew's discordant reasoning goes further on that certain utterances are excluded from the ambit of Article 19(1)(a), Constitution of India, for the reason that such utterances essentially do not construct any ideas and hence have no social value as no social benefit is derived and Article 19(2) holds that the laws in relation to defamation shall continue in force so far as they impose reasonable restriction on liberty. If it is a private defamation where a person brings about damage to another and a person injures reputation and property of another, that person can be sued. But, if the act or utterances made by a person or persons who are delegated with certain authority to run the governance, it is not any defamation, rather it is the person's or the citizen's participation in politics. So, it is his participation in governance. Thus, if a citizen's verbal attacks are disapproval and condemnation of any public policy, or of a government or of the persons in charge of governing any office of any organ of the government or if it is disapproval and condemnation of any agency of the government or of persons in charge of governing any office of any organ of government, it is neither any defamation nor libel. It is because, again, the said verbal condemnation is the citizen's participation in government and governance. If such participation of the citizenry in politics and in governance of the nation is subjected to action for damage or to any other penal consequence, the real sense and spirit of self-government will fade away. Justice Mathew again receives wisdom from the judgement in New York Times v. Sulivan (1964) that the Supreme Court of the United States held that the rule of the law as applied by Alabama Supreme Court was constitutionally deficient for its failure in providing for the safeguards for freedom of speech and press. However, the majority in Nambiar v. Namboodiripad held the contemnor condemned for the contempt of scandalising

the court. The majority in the Bench ignored the reasoning which Chief Justice John Beaumont had advanced in High Court v. Tulsidas Shubhanrao Jadav.[27]Chief Justice Beaumont held that a general statement which was hostile to the utility of courts of justice was not likely to affect the public and need not disturb the equanimity of judges. The speech in question did not amount to such a contempt of court as should be dealt with by the process of contempt.

EMS Namboodiripad was held guilty of and condemned for the contempt of scandalising the court in the Supreme Court of India.[28] Here too, Timoleon's prayers before gods[29] remained unheard. Justice M. Hidayatullah, the then Chief Justice of India, was tasked to write the Court's reasoning of condemning the appellant for scandalising the court. For the end of justice, Hidayatullah wrote, "EMS Namboodiripad knows no Marx." So, the Chief justice of India summed up the philosophy of Marxism-Leninism in a few paragraphs. In his study of Marx, M. Hidayatullah found that Karl Marx has nowhere attacked judiciary. He said, "In all the writings on Marxism, there is no direct attack on judiciary selected as the target of the people's wrath nor are judges condemned personally. Thus, the appellant, according to the Court, has harmed the majesty of the Court owing to his ignorance on Marxism. Here, the word 'attack' was inappropriately used to replace the word 'criticism'. Advocate Rajeev Dhavan[30] finds that the tone of the judgement suggests that the courts occupy an important position in a democratic set up and are not willing to accept criticism which is calculated to raise in the minds of people a general dissatisfaction with and distrust of all judicial decisions. Rajeev Dhavan says that Chief Justice Hidayatullah's study of Marxism is superficial and incomplete and he has misled the Court through his comments on Karl Marx's views on the position of judges. Rajiv Dhavan means to say that Justice Hidayatullah's analysis of Marxism is amazing (laughable) as he appears to have consumed all the writings of Marx to have it summarized in few paragraphs and he has under-rated and overlooked all the criminal aspects of law of contempt and concentrated on the defects in Namboodiripad's knowledge of Marxism and intended to substantiate his public statement that "judiciary is an instrument of class oppression" is not in accord with Marxist Philosophy. "The donee of a limited power cannot, by the exercise of the very power, convert the limited power into an unlimited one".[31] This is exactly what the then Chief Justice of India, Justice Hidayatullah has attempted to avenge the First Communist Chief Minister of Kerala in T. N. Nambiar v. EMS Namboodiripad.

Supreme Court of India in P.N. Duda v. V. P. Shiv Shankar and others was tasked to hear the prayer for initiation of proceedings for contempt of Supreme Court under the Section-15(1) (a)

and (b) of Contempt of courts Act, 1971, read with rule 3 (a), (b) and (c) of Supreme Court Rules 1975 in respect of a speech delivered at a meeting of Bar Council which was reported in newspapers.[32] The fact is that the respondent No.1P. Shiv Shankar who was a High Court judge before he became Minister of Law, Justice and Company Affairs delivered a speech at a meeting of the Bar Council of Hyderabad. It was alleged that he made statements which were derogatory to Supreme Court as the contemnor respondent attributed to the Court partiality towards the affluent class of people. It was also alleged that he used intemperate language and undignified language and his speech contained slander cast on the Court in respect of both the judges and functioning of the Court. The alleged statements made by Shiv Shankar contained that Supreme Court of India was composed of elements from elite class and the judges thus have unconcealed sympathy for the 'haves' against the have-not. It was further contended that judges are anti-social elements, FERA violators, bride burners and whole hordes of reactionaries had found their heaven in the Supreme Court. The issue herein was that whether the speech or statements publicly made by the respondent P. Shiv Shankar amounted to the contempt of Supreme Court or whether the alleged speech in effect brought disrepute to the Court.

It was the Bench headed by Justice Sabyasachi Mukharji who authored the judgement delivered on 15 April, 1988. Justice Mukharji wrote,

"In the instant case, we have examined the entire speech. Sri P. Shiv Shankar has examined the class composition of the Supreme Court. His view was that the class composition of any instrument indicates its pre-disposition, its prejudice. This is inevitable. Justice Holmes in his dissent opinion in Joseph Lochner v. People of the State of New York, 49, Lawyers' Edition 195-198 U. S. 1904 had observed, "General propositions do not decide concrete cases. The decision will depend on a judgement or intuition more subtle than any articulate major premise." In a study of accountability, if class composition of the people manning the institution is analysed, we forewarn ourselves of certain inclination (and) it cannot be said that an expression or view or propagation of that view hampers the dignity of the courts or impairs the administration of justice." The author of the judgement further said that while respectfully accepting the ratio and the observations of the learned Chief justice (Hidayatullah in EMS v. Nambiar, 1971), we must recognize that times and clime have changed in the last two decades and there have been tremendous erosions of many values."

The question arises here is which values have suffered tremendous erosions between EMS Namboodiripad and Shri P. S. Shiv Shankar? Justice Sabyasachi Mukharji did not answer. While honouring Justice Hidayatullah's observation on Namboodiripad, he made out his own reasonings consequently to let Shiv Shankar escape the Court's wrath under the plea of changes in time and clime and of tremendous erosion in many values and for that purpose, he cited Justice V. R. Krishna Iyer's wisdom in Sri Baradakant Mishra (1974, 1 S.C.C.374) such that Caesar's wife must be above suspicion and such that as justice Krishna Iyer said that it has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers, but by the inability of the courts of law to deliver quick and substantial justice to the needy. So, the petition praying to initiate contempt proceeding against P. Shiv Shankar was dismissed and the politics of judiciary triumphed.

Justice V.R. Krishna Iyer faced charges of criminal contempt of scandalization of Supreme Court as well as High Courts in Vincent Panikulangara v. V.R.Krishna Iyer in 1983.[33] The High Court of Kerala decided that Krishna Iyer's statements/criticism of judiciary did not come within the purview of criminal contempt of scandalising the court.[34] It was a peculiar case of contempt against Justice V.R.Krishna Iyer had come up before the Kerala High Court in 1982 wherein an element of bias had become the bone of contention in adjudicating upon the case.[35] The fact of the case is that Justice Krishna Iyer as one of the distinguished guests addressed the assembled audience at the celebration of the silver jubilee of Kerala High Court. His impugned statements made on the functioning of judiciary are in a nut shell given below.[36]

a. One day the people of this country will rise and say that they don't want this magnificent red stone edifice on the Curzon Road, because it is seen to be counterproductive and in turn the high Courts.

b. When property rights are affected in R.C. Kooper's case, the judge's heart began to bleed.

c. The whole question is whether the judiciary live down its partiality towards the propertariat and cultivate an affection for the proletariat.

d. And in this country the Jesuses are getting crucified and Barbases are very much upheld. Thanks perhaps to the judiciary.

e. That they (judiciary) have not been ordinarily influenced by the executive and or the legislature.

f. In fact, as an insider there are many things I know which I should not mention in public.

g. Our whole judicial approach has a certain independence from all civilized behaviour.

h. In fact, to speak frankly, the Indian judiciary is non est.

The hon'ble high Court of Kerala held that V.R. Krishna Iyer is a wealth of experience, apart from his wisdom and learning and is qualified enough to speak authoritatively on the subject-matter of "Approach to Judicial Reforms" in the symposium. V.R. Krishna Iyer is popular for his contribution as a judge, a member of Law Commission and a strong and powerful proponent of the cause of judicial reforms. The impugned statements made by him were intended to alert people and the legal fraternity towards the needs of judicial reforms, lest the people in whole would reject the system of judiciary in this country. In the circumstances as these, the Court found no reason to issue notice and call upon Sri V.R. Krishna Iyer to answer any charge of contempt.

Conclusion

It is, from the above discussions, concluded that the words from Fali S. Nariman that 'the concept of contempt arising out of scandalising the courts as connotated in the Contempt of Court Act, 1971 is beautifully evasive and the interpretations thereof vary according to the varied individual perceptions' is true. The three occasions where the Supreme Court of India was tasked to deal with the contempt of scandalising the courts are seen to have judicial creativeness applied differently on different ideological basis. The English and the American experiences in the matter of scandalising the courts are also seen to have suffered from inconsistency. The Wilmont judgement was an unpublished one, still judges adhere to it as a piece of precedent to keep themselves immune from public criticism of judiciary, it is so much that the donee of a limited power has always exercised its delegated authority to turn the limited power into an unlimited one. Prof. Griffith in his book 'The Politics of the Judiciary' has said what EMS Namboodiripad said in his press conference when he was the Chief Minister of Kerala. The English judiciary never tasked him to answer the contempt of court. What Sri P. Shiv Shankar said was more attacking on judges than what Namboodiripad had spelt out. There

are three statements, for example, (i) judiciary is an instrument of class oppression, (ii) judges favour the 'haves' against the have not, and (iii) when property rights are taken away in R.C. Kooper's case, judge's heart bleeds. All these three statements mean the same thing, but are given different judicial treatments, implying that discrimination is sometimes justified for the reason that the pious folly has to be honoured. The concept of the contempt of scandalising the courts in the United Kingdom is dead, but in India, it is alive. The American experience often upholds free speech, though promotion of socialist and communist ideas and activities has been punished. Free speech has struggled very much to come out in the face of state-made restriction (reasonable/unreasonable). Yet, it has to step over a lot more impediments. However, Fali S. Nariman's 'balanced approach' in the context of contempt of scandalising the court' seems to be quite a realistic advice.

However, free speech deserves its due share of the cake. Free speech and empowerment of people are inseparable. A few lines from Shakespeare's Shylock given below would suffice.

If you prick us, do we not bleed?

If you tickle us, do we not laugh?

If you poison us, do we not die?

And you wrong us, shall we not revenge?[37]

Shylock's dialogue is not an isolated area of thinking as it encompasses humanity in its entirety. No matter wherefrom does it come. May it come from the pious or from the laity, it certainly reflects pain, agony, anguish, belief and thoughts of the speaker. If individual's liberty of free speech is denied, and if that wrong done to people goes beyond tolerance capability, resistance is the only answer. What was done to EMS Namboodiripad is, according to S.P. Sathe, an act of transgressing boarders and enforcing limits suitable to the folly of the pious.

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