

SCOPE FOR MISUSE FOR THE JUDICIARY IN INDIAN CONTEMPT LAW

AUTHOR – SHAIL HUNDEKAR, STUDENT AT CHRIST UNIVERSITY,

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ABSTRACT

Freedom of speech and expression is a fundamental right enshrined in the Constitution of India under Article 19(1)(a). It is a vital right for the functioning of a democracy, as it allows citizens to hold their government accountable and to participate in public discourse. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2), including restrictions in the interest of the administration of justice.

One of the most important restrictions on freedom of speech and expression is the law of contempt of court. Contempt of court is an act not defined in the Constitution of India or any other statute. Oswald defines 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.⁹⁸⁸



⁹⁸⁸ Oswald's Contempt of Court, Butterworth Law Publishers Ltd, Third Edition Reprint, 1993

The law of contempt of court is essential to protect the independence and impartiality of the judiciary. It also helps to ensure that trials are fair and that court orders are respected. However, the law of contempt of court must be carefully balanced against the right to freedom of speech and expression.

In recent years, there has been a growing debate in India about the need to strike a better balance between freedom of speech and expression and contempt of court. Critics argue that the law of contempt of court is being used too broadly to stifle dissent and to protect the judiciary from criticism. They point to number of cases in which journalists, activists, and lawyers have been held in contempt for relatively minor offenses. The author Rahul Donde pointed out that it does not recognise a basic principle of natural justice, *Nemo debet esse iudex in propria causa*: no man should be a judge in his own cause. He also highlighted the disturbing trend of the judges treating personal attacks on their character as contempt.⁹⁸⁹

Supporters of the law of contempt of court argue that it is essential to protect the integrity of the judiciary and to ensure that trials are fair. They point to the danger of trial by media and the need to prevent litigants from being intimidated by public criticism.

Section 5 of the Contempt of Courts Act, 1971 reads as follows:

5. Fair criticism of judicial act not contempt—A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.⁹⁹⁰

It is contended that Section 5 of the Contempt of Courts Act, 1971 fails to define the term “fair” and there is judicial dilemma on its interpretation giving the judiciary scope for misuse.

⁹⁸⁹ Rahul Donde, *Uses and Abuses of Potent Power of Contempt*, Economic and Political Weekly, Vol.42, N0.39.

⁹⁹⁰ THE CONTEMPT OF COURTS ACT, 1971

For example, the Supreme Court clarified in *Brahma Prakash Sharma v State of Uttar Pradesh*⁹⁹¹ that defamation of a judge is different from committing contempt of court, only for the Supreme Court to hold Prashant Bhushan liable for contempt for 2 tweets made by him which were at best defamatory.⁹⁹²

This paper aims to highlight such contradictions by using a number of judgements made with respect to the hereinabove-mentioned clash between the Freedom of Speech and Expression guaranteed by the Constitution of India and the law of contempt.

LEGAL PROVISIONS

The following are some of the important legal provisions in India related to contempt of court:

- Section 12 of the Contempt of Courts Act, 1971: This section defines contempt of court and sets out the punishments that can be imposed for contempt of court.⁹⁹³
- Section 3 of the Contempt of Courts Act, 1971: This section provides that the publication of a fair and accurate report of a judicial proceeding does not amount to contempt of court.⁹⁹⁴
- Section 5 of the Contempt of Courts Act, 1971: This section provides that fair criticism of the judiciary does not amount to contempt of court.⁹⁹⁵
- Section 19 of the Contempt of Courts Act, 1971: This section provides that no court shall initiate any proceedings for contempt of court on its own motion after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.⁹⁹⁶
- Article 19(2) of the Constitution of India: This Article provides that the right to freedom of speech and expression is subject to certain

⁹⁹¹ *Brahma Prakash Sharma v State of Uttar Pradesh*, 1954 AIR 10

⁹⁹² Re: Prashant Bhushan and another (2020), SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020

⁹⁹³ Supra at 3.

⁹⁹⁴ Id

⁹⁹⁵ Id

⁹⁹⁶ Id

reasonable restrictions, including restrictions in the interest of the administration of justice.

Provisions giving courts the power to punish for Contempt of Court in India:

- Article 129 Of the Indian Constitution: It says that supreme court will be a court of records and it will have all the powers which a court has and this power also includes the power for punishing for its contempt.

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- Article 215 of the Indian Constitution: It says that all the high courts will be court of records and it will have all the powers which a court has and this power also includes the power for punishing for its contempt.

The Supreme court observed in the case of Pallav Sheth v. Custodian & Others that there is no doubt that Supreme Court and High Courts are courts of record, and that the constitution has given them the power to punish for contempt which power cannot be abrogated or stultified.⁹⁹⁷

ARTICLE REVIEW

- Uses and Abuses of Potent Power of Contempt of Court Author: Rahul Donde Published in: Economic and Political Weekly, Vol.42, No. 39, Oct 5 2007

This article provided a major contribution to the theoretical background of the paper. Rahul Donde, the renowned author, points out a number of key elements as to the contempt of court law in India:

- a) It is entirely dependent on the opinions and predisposition of judges.
- b) In contempt proceedings, the court is a judge in its own cause.
- c) S.14 of the Act allows courts to summarily punish alleged acts of contempt.

- d) There is a trend in Indian courts of judges treating personal attacks on their character as contempt.

What is of maximum value in this article is the emphasis on how contempt law has the scope of being manipulated for political and personal gains. This is the central idea behind the problem statement of this paper highlighted in its abstract.

- Freedom of Speech and Contempt of Court Author: S.P Sathe Published in: Economic and Political Weekly, Oct 11970

The author highlights the primary tension mentioned in this paper existing between two fundamental aspects of a democratic society: freedom of speech, as well as contempt of court.

These hereinabove-mentioned tensions are time and again seen in the cases that we will be looking into as we delve into the scope of misuse for the judiciary in Indian contempt law, which makes this Article more important in the context of this paper.

- Free Press and Independent Judiciary: The Juxtaposition in the Law of Contempt of Published in: Journal of the Indian Law Institute (Vol. 47, No. 4)

This research was more specific in nature, as it focused more on the legal and ethical challenges as to press reports on ongoing cases. It gave this research a more clear real-time example of how the law of contempt of court reacts with other rights.

Although the cases we will be looking into focus more on the Fundamental Right to freedom of Speech and Expression, it is also important to note that this is not the only right that contempt law in India interacts with (as seen in this research, it also interacts with press rights in a more specific example)

- Debating Contempt of Court Author: Alok Kumar Prasanna

Published in: Economic and Political Weekly

⁹⁹⁷ Pallav Sheth v. Custodian & Ors., AIR 2001 SC 2763

This author provides us with a viewpoint of both sides of the debate, discussing the delicate balance between freedom of speech and expression and the authority of the judiciary to uphold its dignity and respect through the power of contempt.

The main observation picked up from this article is how the author highlights that there needs to be more transparency and accountability within the judiciary, while also ensuring criticism is constructive rather than malicious.

It raises an important question: Does constructive criticism of the judiciary have enough protection in the current scenario of Indian Law?

INTERNATIONAL LAW

➤ United States of America

• Scope of contempt of court

In India, contempt of court can be either civil or criminal. Civil contempt is defined as wilful disobedience to a court order. Criminal contempt is defined as any act that tends to scandalize the court, prejudice a pending case, or interfere with the administration of justice. (Section 2, Contempt of Courts Act)⁹⁹⁸

In the United States, contempt of court is also divided into civil and criminal contempt. However, the scope of contempt of court in the United States is narrower than in India. For example, fair criticism of judges is protected by the First Amendment in the United States, but it may be held to be contempt of court in India if it is seen as undermining public confidence in the judiciary.⁹⁹⁹

• Procedure for punishing contempt of court

The procedures for punishing contempt of court are also different in India and the United States. In India, courts have the power to punish contempt of court summarily, without a trial. (Section 14 of the Act) This means that a person

can be held in contempt of court and sentenced to prison or fined without being given the opportunity to defend themselves in a trial.¹⁰⁰⁰

In the United States, there is a right to a trial in contempt of court cases (although only in matters of indirect contempt). This means that a person accused of contempt of court has the right to be represented by an attorney and to present evidence in their defence.¹⁰⁰¹

• Punishments for contempt of court

The punishments for contempt of court are more severe in India than in the United States. In India, contempt of court can be punished with up to six months in prison or a fine of up to Rs. 2,000¹⁰⁰². In the United States, contempt of court can be punished with up to six months in prison or a fine of up to \$5,000.¹⁰⁰³

• Other differences:

1. In India, courts have the power to punish contempt of court committed outside of the courtroom as seen in the *Prashant Bhushan case*¹⁰⁰⁴. In the United States, courts generally only have the power to punish contempt of court committed in the courtroom.
2. In India, the burden of proof is on the person accused of contempt of court to prove their innocence. In the United States, the burden of proof is on the prosecution to prove beyond a reasonable doubt that the person is guilty of contempt of court.¹⁰⁰⁵
3. In India, there is no right to appeal a conviction for contempt of court.¹⁰⁰⁶ In the United States, there is a right to appeal a

⁹⁹⁸ Supra at 3

⁹⁹⁹ [contempt of court](#) | [Wex](#) | [US Law](#) | [LII](#) / [Legal Information Institute](#) (cornell.edu)

¹⁰⁰⁰ Supra at 3

¹⁰⁰¹ Rule 44, Federal Rules of Criminal Procedure, USA

¹⁰⁰² Supra at 3.

¹⁰⁰³ Supra at 12.

¹⁰⁰⁴ Supra at 5.

¹⁰⁰⁵ Supra at 12.

¹⁰⁰⁶ Supra at 3.

conviction for contempt of court.¹⁰⁰⁷

➤ United Kingdom

In the UK, contempt of court is divided into two types: civil contempt and criminal contempt.

Criminal contempt is committed when a person does something that interferes with the administration of justice. This can include:

- Contemptuous behaviour towards the judge or magistrates while holding the court
- Disobeying a court order
- Breaching an undertaking given to the court

Criminal contempt can be punished with up to two years in prison.

Civil contempt is committed when a person disobeys a court order in a civil case. This can include:

- Failing to attend court when summoned
- Failing to comply with a court order, such as an order to pay money or to hand over documents

Civil contempt can be punished by the court ordering the person to be imprisoned until they comply with the order. However, this is rarely done in practice.

The Crown Court has the power to punish for criminal contempt, while magistrates' courts have the power to detain people for contempt in the face of the court.

The Attorney General can intervene in cases of indirect contempt and the Crown Prosecution Service can institute criminal proceedings on his behalf.

In civil proceedings, the court can issue a bench warrant for the arrest of a person who fails to attend court or comply with a court order. The person can be released on bail after giving an apology to the court.

Imprisonment is rarely ordered for contempt of court in the UK. In practice, an apology or fine are usually considered to be appropriate punishments.¹⁰⁰⁸

OBSERVATIONS THROUGH VARIOUS JUDGEMENTS IN INDIA

1) Re: Prashant Bhushan and another (2020)¹⁰⁰⁹

In June 2020, Prashant Bhushan, a senior advocate and human rights activist, posted two tweets on Twitter criticizing the Supreme Court of India (SC) and the Chief Justice of India (CJI). In the first tweet, Bhushan said that the SC had become a "court for the rich and powerful" and that the last six years had been "the worst six years for the Supreme Court". In the second tweet, Bhushan posted a cartoon of the CJI riding a tiger with the caption "India's democracy has become a tiger's democracy".

The SC took suo motu (on its own motion) cognizance of Bhushan's tweets and issued a contempt notice to him. Bhushan defended his tweets, arguing that they were fair criticism of the judiciary and that he was protected by the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. In August 2020, the SC found Bhushan guilty of contempt of court and sentenced him to a symbolic fine of ₹1. The SC held that Bhushan's tweets were "scurrilous" and "malicious" and that they had "undermined public confidence in the judiciary". The SC also held that Bhushan's defense of fair criticism was not available to him because his tweets were not fair criticism but rather "vituperative attacks" on the judiciary.

The main criticism of the judgment is as follows:

The SC's finding that Bhushan's tweets were contemptuous is based on a narrow and restrictive interpretation of the law of contempt of court. The Supreme Court, in this case, took the view that even fair criticism of the judiciary could be held to be contempt of court if it is likely to undermine public confidence in the

¹⁰⁰⁷ Supra at 12.

¹⁰⁰⁸ Contempt of court – Government of UK (www.gov.uk)

¹⁰⁰⁹ Supra at 5.

judiciary. This interpretation could be used to silence critics of the judiciary. Section 5 of the Act allows fair criticism¹⁰¹⁰ but clearly, this definition is open to interpretation and has a scope of misuse. The judgment sends a message that even fair criticism of the judiciary could be punished with contempt of court. This is likely to discourage people from criticizing the judiciary, even when the criticism is justified. The SC's judgment in the Bhushan case is a setback for the right to freedom of speech and expression in India. The judgment sets a dangerous precedent for stifling criticism of the judiciary.

2) *Re: Vijay Kurle and Others (2020)*¹⁰¹¹

Vijay Kurle, along with 2 friends, sent a letter to the then CJI Ranjan Gogoi, levelling scandalous allegations against Justice RF Nariman and Justice Vineet Saran. They were held guilty of contempt of court with 3 months imprisonment and a fine of Rs. 2000. It was decided that such allegations cannot be made against judges and the court.

This judgment raises a very important question: are personal attacks fairly treated as contempt or is contempt law just used to provide immunity to judges from any kind of criticism?

3) *Brahma Prakash Sharma v State of U.P.*¹⁰¹²

In this case, the appellants were members of the Executive Committee of the District Bar Association at Muzafarnagar in Uttar Pradesh. They passed resolutions stating that two judicial officers were "incompetent in law", "do not inspire confidence in their judicial work", "are given to stating wrong facts when passing orders" and are "overbearing and discourteous to the litigant public and the lawyers alike". The resolutions were sent to the District Magistrate, Commissioner of the Division, Chief Secretary and the Premier of Uttar Pradesh with covering letters marked "confidential". The State of Uttar Pradesh initiated contempt proceedings

against the appellants in the Allahabad High Court. The High Court found the appellants guilty of contempt of court and sentenced them to imprisonment for six months each. The appellants appealed to the Supreme Court. The supreme court upheld the decision.

However, The Supreme Court came up with certain principles:

- The object of contempt proceedings is to protect the administration of justice and not to vindicate the dignity of the judges personally.
- The power to punish for contempt of court must be exercised sparingly and with caution.
- Fair criticism of judges is not contempt of court. However, any criticism which is scandalous or tends to undermine public confidence in the judiciary is contempt of court.
- The burden of proof is on the prosecution to prove beyond reasonable doubt that the accused is guilty of contempt of court.

It is contended that in the hereinabove-mentioned cases, however, these principles were either ignored, not used properly or not even considered.

Moreover, Indian courts have, on multiple occasions, held that this power of the Court has to be used cautiously and only in extreme circumstances, so as to not affect the citizens' freedom of speech and expression:

4) *Vishwanath v. E.S. Venkatramaih*¹⁰¹³

Mr E.S. Venkataramiah, a former Chief Justice of India, gave an interview to a noted journalist Kuldeep Nair on the eve of his retirement on 17-12-1989. In the interview, Venkataramiah made a number of statements about the state of the Indian judiciary.

One of the most controversial statements that Venkataramiah made was that the judiciary

¹⁰¹⁰ Supra at 3.

¹⁰¹¹ SUO MOTU CONTEMPT PETITION (CRIMINAL) NO. 2 OF 2019

¹⁰¹² *Brahma Prakash Sharma v State of U.P.* (1953 SCR 1169)

¹⁰¹³ *Vishwanath v. E.S. Venkatramaih* 1990 Cri LJ 2179 (Bom)

had deteriorated in its standards because judges were being appointed who were willing to be influenced by lavish parties and whisky bottles. He also said that there were at least 4 to 5 judges in every High Court who were practically out every evening, wining and dining either at a lawyer's house or a foreign embassy. He estimated the number of such judges around 90 and favoured transferring them to other High Courts.

Venkataramiah also reiterated that close relations of judges should be debarred from practising in the same High Courts. He expressed himself strongly against sons-in-law and brothers of judges appearing in the courts where the latter were on the Bench. He said that most relations of judges were practising in the High Courts of Allahabad, Chandigarh, Delhi and Patna, and that in practically all the 22 High Courts in the country, close relations of judges were thriving. He also alleged that certain judgments had been influenced through them, even though they had not been directly engaged as lawyers in such cases.

A Division Bench of the Bombay High Court held that the words complained of did not amount to contempt of court on the grounds that the entire interview appeared to have been given with the idea to improve the judiciary.

An important observation to be made here is if the same ratio is applied in the Prashant Bhushan case, the outcome of the case would be completely different as it was also a criticism and in no way to reduce the authority of the court but just to highlight shortcomings, which arguably could have the intention of improvement of court practices.

5) Tax Practitioners' Assn. v. R.K. Jain ¹⁰¹⁴

The Supreme Court decision in this case is a strong defence of the freedom of speech and fair criticism, even of the judiciary. The Court recognizes that fair criticism is essential to a healthy democracy and that it can help to improve the system of administration of justice.

The Court also recognizes that the power to punish for contempt of court should be used sparingly and only when the criticism is ill-motivated, deliberately intended to run down the institution, or transgresses all limits of decency and fairness.

This decision is important because it reinforces the principle that freedom of speech is a fundamental right that should not be easily restricted. It also sends a message to the judiciary that it is not above criticism and that it must be accountable to the public.

Here is a summary of the key points of the decision:

- Fair criticism of the system of administration of justice or functioning of institutions or authorities is protected by the freedom of speech and expression.
- The court will not use the power to punish for contempt to curb the right to freedom of speech and expression, except in extreme cases.
- The criticism must be ill-motivated, deliberately intended to run down the institution, or transgress all limits of decency and fairness in order to be punishable for contempt.

In the court's words –

"After Independence, the courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalise or lower the authority of the court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill-motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons".

¹⁰¹⁴ Tax Practitioners' Assn. v. R.K. Jain, (2010) 8 SCC 281

Again, we see a clear contradiction of the way the modern court has interpreted the contempt law and the classic way. The new approach seems to be not modern but rather based on just the idea of making the judiciary immune to criticism regardless of the Right to freedom of Speech and Expression enshrined in the Constitution.

There are a couple more cases which emphasize on the interaction between these two democratic concepts:

In *Het Ram Beniwal v. Raghuvver Singh*¹⁰¹⁵, the Hon'ble Supreme Court stated "Every citizen has a fundamental right to speech, guaranteed under Article 19 of the Constitution of India. Contempt of court is one of the restrictions on such right. We are conscious that the power under the Act has to be exercised sparingly and not in a routine manner. If there is a calculated effort to undermine the judiciary, the courts will exercise their jurisdiction to punish the offender for committing contempt".

In *Baradakanta Mishra v. Registrar of Orissa High Court*¹⁰¹⁶, the Constitution Bench of 5 judges observed judges do have shortcomings- after all they are human. The bench lay emphasis on the need for judges to be corrected by criticism. "If the judicature has serious shortcomings which demand systemic correction through socially-oriented reform initiated through constructive criticism, the contempt power should not be an interdict. All this, far from undermining the confidence of the public in Courts, enhances it and, in the last analysis, cannot be repressed by indiscriminate resort to contempt power."

CONCLUSION

As we can observe, judicial decisions in relation to contempt of court and its interaction with the Freedom of Speech and Expression enshrined in the Indian Constitution are not uniform. On the one hand, we see cases where even personal attacks on the judges were allowed to

be treated as contempt, whereas, on the other hand the Court said this power of contempt should be used only in a sparing manner.

This reiterates the initial statement made in this paper- Contempt of Court law in India does not define what is "fair" criticism, creating a judicial dilemma. This open-to-interpretation status of the term makes it an easy tool for misuse, and not just misuse, but also genuine misinterpretation.

This problem has been seen time and again in different judicial decisions in Indian courts and all the more emphasises the need for clarity on this subject.

¹⁰¹⁵ *Het Ram Beniwal v. Raghuvver Singh*, (2017) 4 SCC 340

¹⁰¹⁶ *Baradakanta Mishra v. Registrar of Orissa High Court*, (1974) 1 SCC 374