



CONTEMPT OF COURT: POWER OF JUDICIARY VS. RIGHT OF CITIZENS

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ABSTRACT

Since last month, India witnessed another debatable case where the Supreme Court took Suo motu cognizance of the alleged contempt of court accusation. Contempt of Courts Act, 1971 segregates contempt into two categories, namely, civil and criminal contempt. Ironically, the legislature does not provide a proper codified definition of the term 'contempt'. Since the implementation of the Act, it has been considered as severely arbitrary in nature, completely depending on the whims of the Judges presiding over and possess a potential threat to the infringement of the Fundamental Right to Speech and Expression enshrined under Art. 19 of the Constitution, which attempts to grant freedom to every individual to express their personal opinion. Article 129 of the Constitution of India, 1950 empowers the Supreme Court to take prima facie cognizance of any act which, according to the court, would amount to depreciation of the court's stature. However, there has been many instances where the fundamental right is denied to a citizen in the name of contempt of court.

Coming to the allegation on Prashant Bhushan for contempt of court, there were two tweets from Prashant Bhushan's which were regarded as causing disregard to the

¹ K. Venkataramanan, *The Hindu Explains / What is contempt of court?*, The Hindu (2020), <https://www.thehindu.com/news/national/the-hindu-explains-what-is-contempt-of-court/article32249810.ece> (last visited Sep 30, 2020).

prestigious position of a court of which the Supreme Court took suo motu cognizance in order to protect the standing of the judiciary. The authors of this article would focus on the concept of contempt of court and would draw the focus of the audience through this article on the loopholes of the Act in force dealing with the concept and what should be the desired interpretation in order to strike a balance between both the statute.

INTRODUCTION

The notion of contempt of court is prevalent from many centuries. Initially, it was practiced by the king of England in order to safeguard the power of judiciary that was exercised by him. However, it was eventually practiced by the judges those who worked on behalf of him.¹ Infringement of the orders that were given by the judges lead to serious offences. The orders given by the judges had equivalent power as that of the king. Thus, any violation of the directives directed by the judges was considered as unlawful.

Commission or omission of a practice that portrays discourtesy or misconduct towards the judiciary system of the country treated as an offence. Any conduct that violates the fraternity and equity of the court is termed as contempt of court. The charges on contempt can be brought against any personnel that disrespect the judiciary system of the nation. The Supreme Court of India is vested with constitutional power of the contempt of court.² There are classifications on the

² Ujjaini Chaterji, *Contempt, dignity and fair criticism: What do they mean to courts?*, The Leaflet (2020), <https://www.theleaflet.in/contempt-dignity-and-fair-criticism-what-do-they-mean-to-courts/#> (last visited Sep 30, 2020).



proceedings of contempt.³ Section 2(a) of The Contempt of Courts Act, 1971 includes the two types of contempt of court i.e. civil and criminal.⁴ The intended sabotage of the directions given by the court results in contempt of civil nature as it is enshrined in Section 2(b) of the said Act.⁵ According to Section 2(c) of the said Act, publication of the scandalizing or tending to scandalize or interference in the court's activity which results in lowering of the authority is considered as contempt of criminal nature.⁶ The Apex Court of the nation as well as the High Courts has been capacitated to penalize under Article 129 and 215 respectively of the Indian Constitution. However, this power is not subjected to Article 19(1)(a) of the Constitution.⁷ According to Article 141, the law that has been decided by the Apex court should be binding on the courts lower in rank.⁸ As portrayed in Article 142, the Supreme Court of India has been guaranteed the right to come up with any decree or order that is required in maintaining justice to the society.⁹ Complete credit and faith, under Article 261, should be given throughout the territory of India to the proceedings carried on by the judiciary and to public record and

acts.¹⁰ The High Courts have been permitted to provide punishment as per Section 10 of The Contempt of Courts Act, 1971 in cases of contempt in the lower courts.

NEED OF REFRAMING THE LAW ON CONTEMPT OF COURT?

The heated topic in the Indian Judiciary system that has recently aroused is that of Prashant Bhushan contempt case¹¹. Suo moto proceedings on contempt has been instituted against Mr. Bhushan, Advocate on Record by the Apex Court of the nation. The said advocate had made two tweets against the present Chief Justice of India. However, Mr. Bhushan elucidated that both of his tweets did not have any intention to defame the integrity of the Indian Judiciary. On 21st of July, 2020, suo moto proceedings on contempt against the said Advocate were initiated. The constitutional bench on 14th of August, 2020 held Mr. Bhushan guilty for committing the offence of contempt of court. However, the case till date is sub-judice in matter relating to the quantum of

³ contempt of court, The Free Dictionary, <https://legal-dictionary.thefreedictionary.com/contempt+of+court> (last visited Sep 30, 2020).

⁴ Types of contempt of courts, SRD Law Notes, <https://www.srdlawnotes.com/2016/03/types-of-contempt-of-courts.html> (last visited Sep 29, 2020).

⁵ Hemant More, *Contempt of Court*, The Fact Factor (2019), https://thefactfactor.com/facts/law/legal_concepts/legal_terms/contempt-of-court/824/ (last visited Sep 30, 2020).

⁶ Nishita Kapoor, *Contempt of Court and its Types and Punishment for Contempt of Court*, Law Audience (2019), <https://www.lawaudience.com/contempt-of-court-and-its-types-and-punishment-for-contempt-of-court/> (last visited Sep 30, 2020).

⁷ Rituj Chopra, *The Concept of the Contempt of Court*, legalserviceindia, <http://www.legalserviceindia.com/article/1255-Contempt-of-Court.html> (last visited Oct 1, 2020).

⁸ Diva Rai, *Scope and application of the doctrine of precedents under Article 141 of the Constitution*, ipleaders (2020), <https://blog.ipleaders.in/scope-and-application-of-the-doctrine-of-precedents-under-article-141-of-the-constitution/> (last visited Oct 1, 2020).

⁹ Article 142, The Hindu (2019), <https://www.manifestias.com/2019/11/28/article-142-and-ayodhya-verdict/> (last visited Oct 2, 2020).

¹⁰ Article 261, indiankanoon, <https://indiankanoon.org/doc/358206/> (last visited Oct 1, 2020).

¹¹ 2020 SCC OnLine SC 588.



punishment.¹² This particular case has drawn more attraction on the fact that whether the law on contempt of court should be reviewed or not.

➤ **Arguments in favour v. Arguments Against**

Huge number of cases on contempt of court both of criminal and civil in nature is pending in front of different courts. The increasing number of matters bring into view that there has been sustaining rise in the number of cases relating to contempt of court. The reputation of the Indian Judiciary system would have been affected. Amending the term of contempt could deteriorate the influence that people have on law which would eventually create dishonor towards the judiciary. Gap in legislation would be created by eradicating offences related to contempt of court. The courts of higher hierarchy infer their rights based on contempt of court from the Constitution of India and are independent in nature. The procedure to investigate and attract penal provisions in dealt in The Contempt of Court Act, 1971. Mere expunction of the offence of contempt of court would put no impact of the inherent powers of the higher courts as enshrined under the Constitution. The lower courts could not seek redressal in lieu of contempt of court if the term contempt is omitted from the said Act. The removal of the term would not lead the higher courts to provide punishment of contempt in the lower courts. The Contempt of Courts Act, 1971 contains

several provisions which act as a shield to protect the mistreatment of law. It clearly mentions via its provisions as to what amounts to the ambit of contempt of court. On the contrary, there would have been violation of the liberties that are civil in nature. The law on criminal contempt when comes into question is in turn recognized as the fundamental rights of freedom of speech and expression. An amendment in the Contempt of Courts Act, occurred in the year 2006 so as count on conclusive defences on contempt of court. In India the term criminal contempt has a wider meaning thereby leading to complication of cases. The concept of contempt has become outdated in recent era in many foreign territories.¹³ The courts of America do not pay any heed these days to contempt cases in lieu of any comments addressed to the judges.

ESSENCE OF CODIFIED RULE: NEED OF THE HOUR

The judicial institution, today, has come to acquire in the common man's mind space an unique position, and in certain respects, a lot of frustrations in the citizen refills when poor governance is addressed by a feeling that really can be obtained on going to a court, may it be at individual level, may it be at the level of a person who is treated badly by the system or may it be now, through the form of public interest litigation. So, this institution becomes as important as parliament. According to Queen's Counsel, Harish Salve, "The court is no higher than Parliament but no later than Parliament."

¹² Rajeev Rambhatla & Vartika Dixit, *India: Free Speech Vs Contempt Of Court, An Analysis In Light Of The Prashanth Bhushan Case*, mondaq (2020), <https://www.mondaq.com/india/libel-defamation/980554/free-speech-vs-contempt-of->

[court-an-analysis-in-light-of-the-prashanth-bhushan-case-](#) (last visited Oct 2, 2020).

¹³ Contempt of Court, drishti (2020), <https://www.drishtias.com/daily-updates/daily-news-editorials/contempt-of-court-2> (last visited Oct 2, 2020).



On this context, it is imperative to first understand the subtle difference between freedom of speech and when an expression crosses the limits of Article 19(2) and enters into the jurisdiction of Section 2(c) of the Contempt of Courts Act, 1971. In any democracy, it is important that its citizens are being able to speak his mind freely, so as being able to express his needs and also criticise the system of administration and the society. and wants Mr. Prashant Bhushan, after being convicted of the charge of causing contempt to the functioning and demean the stature of the Supreme Court, in an interviewed clarified his understanding of Freedom of Speech as “The right to say what you want freely”.

If we compare the US provisions on Freedom of Speech, we could see the most expansive law where even when a nationalised newspaper New York Times published the Pentagon Papers revealing a lot of sensitive information regarding the ongoing Vietnam war, the U.S. Supreme Court upholding their right dismissed the petition for contempt and held that the citizens have the right to know each and every information which the Government is undertaking for the sake of endorsing the security and integrity of the country and the Government has no right to restrict the publication of such information. However, in India, on numerous occasions, the right to Freedom of Speech has been ventured to regulate by applying the sedition law under Indian Penal Code, 1860, although there has been varied opinions of the Supreme Court on this issue but it is also been misused, even today.

Needless to say, Section 66A of The Information Technology Act, 2000, which has now been struck down by the court for its

vagueness, used to punish a person who publishes any indecent post on the social media platform which incites or causes alarm amongst the society, without even defining which information and what kind of information would qualify under this section, thereby, falsely charging a lot of people just for criticising any act or people.

Just as there is no difference between the right of the media and that of an individual regarding freedom of speech, there is no distinction between the rights of a lawyer or an officer of court or a retired judge or a sitting judge vis-à-vis any other ordinary citizen. Thus, if any law is made which makes it an offence to criticise the court, that should be deemed to be an unreasonable restriction on the Freedom of Speech. Restrictions can be imposed even on the ground of contempt of court but not unreasonably. Thus, speech or expression by itself should not be made punishable under the Contempt of Courts Act.

Now, coming to the point whether there is a need for a codified rule for advocates on use of social media to express their opinion, I would like to refer to the rules of American Bar on Professional Ethics of Lawyers. It clearly lays down certain guidelines and checks and balances which a lawyer must ensure before expressing any comment on a public platform. Be it advertising their services or updating the masses of any recent legal development, an advocate duty is to uphold the importance and integrity of the legal field towards the general public and thus, he possesses a weighty role in the society. Therefore, he should always be careful in his use of words and thus, India, also needs a proper codified rule on the use of the social media handles by advocates in



order to ensure that no such cases like Mr. Prashant Bhushan's repeats itself and also to avoid confusion.¹⁴

CONTEMPT OF COURT: WHAT SHOULD BE THE RATIO?

Criticism of an institution maybe hurtful for those who occupy the office but if the criticism is of the kind that at the end of it, the institution will emerge stronger, then that criticism is justified, that it is addressed in words which may be in questionable test is never a ground to circumscribe the content of that criticism. One may criticise the language but he must reserve the right to make that criticism. A criticism which is made to undermine the authority of the system, which is, meant to undermined the court, and when that criticism undermining the court is made by those who have a weigh over public opinion, that is something which undermines, one of the pillars of democracy and that is a criticism which must be dealt with.

Lord Denning once said, "Contempt is not to protect the court's dignity. It must rest on surer foundations." Contempt is to protect the institution and to prevent interference with the course of justice. So, if we keep these big guidelines in view, anything which undermines the institution rather than criticise the institution, that is where the freedom of speech ends, and that is where one cross the bounds of legitimacy and not only can but it should bring the might of the law down in such criticism.¹⁵

So far, The Contempt of Courts Act, 1971 basically follows U.S. regime on deciding contempt cases. It goes by the rationale that there is no need for a formal trial and evidencing procedure generally followed while deciding a case before a court and a mere knowledge of the court of the alleged contempt is sufficient to hold the accused liable for such actions. The language of Sec. 2(c) of the Contempt of Courts Act, 1971¹⁶ raises a substantial question on people's mind as to what should be considered as a justifiable, bona fide opinion or for that matter, criticism on the performance of the judiciary. According to an article published by The Hindu, it has been stated that although all contemptuous comments are opinions expressed by an individual or a group of individuals but all opinions are not contemptuous, more so, when such expression is fair and without any mala fide intention. Clarifying his point, author, Gautam Raman, has further stated that on an earlier account, the Apex Court has already ruled that although Freedom of Speech and Expression has been granted under Article 19(1)(a)¹⁷, it is subject to certain reasonable restrictions under Sec. 19(2) and an alleged contemptuous express of opinions through any mode would fall under that category.¹⁸ According to the Contempt of Courts Act, 1971, a contempt of court can be ascertained when it causes an interference with the

¹⁴ epiq focus, *Social media ethical obligations for lawyers*, epiqglobal (2020), <https://www.epiqglobal.com/epiq/media/thinking/ediscovery/social-media-ethical-obligations-for-lawyers.pdf> (last visited Sep 30, 2020).

¹⁵ 2020, <https://www.thehindu.com/opinion/op-ed/what-is-criticism-and-what-is->

[contempt/article32378502.ece](https://www.thehindu.com/opinion/op-ed/what-is-criticism-and-what-is-contempt/article32378502.ece) (last visited Sep 29, 2020).

¹⁶ THE CONTEMPT OF COURTS ACT, 1971, 2(c).

¹⁷ The Constitution of India, 1950, 19(1)(a).

¹⁸ C. K. Daphtary & Ors vs O. P. Gupta & Ors, 1971 AIR 1132, 1971 SCR 76.



administration¹⁹ and due course of justice²⁰, appalling the court²¹. The present Act dates back to 1765 and acquires its identity from the Act of England and more sadly, it has not been subject to an alteration or amendment since then. Although England is a country ruled by monarchs and the judges are nothing but delegated officers of The King, a democratic country like India works on a completely different agenda. Therefore, judges of our country need not necessarily demonstrate their pompousness and majestic power to whosoever tries to criticise any public activity or judgment pronounced by them, as has been rightly pointed out by Lord Atkin, “Justice is not a cloistered virtue. It must suffer the scrutiny and outspoken comments of ordinary men”²².

If we go by the literal interpretation of Section 2(c), it is quite confusing to understand as to how a mere express of opinion on an activity of a judge or criticising some of the acts of previous Chief Justices amounts to criminal contempt of court, since neither does it disturb the due governance of the court nor does it demean the stature of the Court for that matter rendering the provision vague and undefined.²³ Therefore, there is an ardent need to restructure the whole legislation and clarify more specifically what should be treated as a contempt of court and what should be held as a fair judicial criticism also defining the terms ‘scandalising the court’ and ‘lowering the dignity of the court’ in order to provide a better clarity to the statute.

CONCLUSION

Social media platforms like twitter and other similar media platforms have put the power of publication in the hands of each individual, but the courts seem to be more comfortable in the traditional society where no such platform was available to the common public to express their opinion freely and engage in healthy criticism. The courts in India, has always been reluctant to adopt to newer or advanced technology which has, on the other hand, affected the growth of the country. In UK, in the chancery, instructions are being given to settle private defamation cases within a span of 6 months as far as possible, but sadly, in India, a defamation case can go on for an indefinite period of time. Mr. Prashant Bhushan, once, few years back, had passed some derogative comments against Justice Kapadia, known to be the most popular, forthright, and one of the most impeccably honest judges about whom even the gossip mongers wouldn’t gossip. For a judge like him, because he did not like his verdict in one environmental case, to call him names, Justice Kapadia expressed great anguish in court. As an amicus, Queen’s Counsel Harish Salve moved a contempt. However, Justice Kapadia died but the case is still pending. That indicates to the lack of seriousness of the judicial bench. Therefore, it would be a prudent move for the government to establish a tribunal for private defamation, which would make disparaging comments on a private person on his private

¹⁹ Brahma Prakash Sharma And Others vs The State Of Uttar Pradesh, 1954 AIR 10, 1954 SCR 1169.

²⁰ RE : VIJAY KURLE & ORS., SUO MOTU CONTEMPT PETITION (CRIMINAL) NO. 2 OF 2019.

²¹ Baradakanta Mishra vs The Registrar Of Orissa High Court & Anr., 1974 AIR 710, 1974 SCR (2) 282.

²² (2020), <https://scroll.in/article/970749/prashant-bhushan-contempt-verdict-by-supreme-court-betrays-curious-double-standards> (last visited Sep 28, 2020).

²³ (2020), <https://timesofindia.indiatimes.com/blogs/satyam-bruyat/its-time-to-amend-law-on-contempt-of-court/> (last visited Sep 28, 2020).



life would be actionable, so that at least defamation cases can be concluded quickly. Thus, there should be an immediate clarification of the contempt provisions on the same ground as has been done for Section 66A of the Information Technology Act, 2000. Every individual has a right to criticise another, specially, if such a person is in public light in charge of a prestigious public position or a public figure, and it is unreasonable to be treated as an offence just because it caused that individual annoyance, since it is too vague and undefined. Similarly, scandalising also needs to be either defined or struck down, so that there is a clear guideline available to the citizen about what kind of criticism is permissible and what is not.

