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# **BALANCING CONTEMPT OF COURT WITH FREEDOM OF SPEECH AND EXPRESSION**

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## **ABSTRACT**

A fundamental component of Indian democracy is the freedom of speech and expression guaranteed by Article 19(1)(a), while the authority and integrity of the judiciary are protected under Articles 129 and 215 which gives them the power to punish for contempt of court. Tension frequently arises when these two basic ideals intersect, particularly when judicial criticism is seen as undermining public trust in the legal system. In the modern digital age, where ideas and criticisms spread quickly via social media, this battle has grown more intense. This paper will critically investigate the balance between contempt of court and freedom of speech in India by examining major judicial rulings, statutory frameworks under the Contempt of Courts Act, 1971, and constitutional requirements. This paper discusses how Indian law strives to balance democratic free expression with the requirement to secure the administration of justice. It examines major court rulings, the Contempt of Courts Act of 1971, constitutional provisions, and the effects of the 2006 Amendment's introduction of "truth" as a defense and the need of "substantial interference" with justice. The paper shows that in order to maintain both judicial dignity and democratic accountability, the use of contempt powers must be limited, proportionate, and consistent with constitutional liberty.

## **INTRODUCTION**

The current constitutional and legal framework of our society in India is the result of the evolution of numerous customary practices and religious prescriptions. Law is based on the Vedas, Upanishads, and other sacred writings. The Constitution is the ultimate legislation of India's democratic system, which is based on the rule of law. By impartially interpreting and applying the law, the court maintains this. It guarantees justice, equality, and the defense of rights despite having other obstacles like lengthy legal proceedings and ineffective bureaucracy. The question that emerges now is, what about those who show disregard for the laws?

In any system of government, the fundamental right of speech and expression must be there with the objective of promoting the free exchange of ideas in order to solve governmental issues<sup>1</sup>. However, our constitution lays down freedom of speech and expression under Article 19<sup>2</sup> with certain restrictions and limitations. It is not an absolute right. Limitations are allowed to maintain the public order, morality, sovereignty, and integrity.<sup>3</sup> The public's faith in the legal system is maintained, and judicial authority is protected by the idea of contempt of court. The Supreme Court in the case of *Brahma Prakash Sharma v. State of Uttar Pradesh*<sup>4</sup>, held that the main aim of the contempt of court is to protect the administration of justice from deteriorating rather than to safeguard the judges from personal injury. Without these authorities, the court would be open to irrational criticism and disobedience.

In any democracy, the exchange of ideas and the accountability of the government depend on free speech. Judicial power must be respected in order to maintain public trust and maintain the peace.

The balance between the right to free speech and the powers to punish for contempt thus becomes a continuous and recurring constitutional conflict. In today's digital age, where criticism of the court spreads quickly and extensively, this issue has grown even more urgent. Therefore, the courts need to maintain an appropriate balance between not allowing speech that harms justice and not restricting the reasonable and justified criticism under the pretext of disobedience. In 2006, an Amendment was made to the Contempt of Courts Act, 1971<sup>5</sup>, which introduced the concept of 'truth' as a defense in criminal contempt, which represented an attempt to harmonize these conflicting principles.

This article examines that balance through different dimensions like by explaining the concepts of defining free speech and contempt, by analysing statutory and judicial developments in India.

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<sup>1</sup> K.D. Singh, "Review of J.J.D. Kapoor, Contempt of Court" 47 *Journal of the Indian Law Institute* 581 (2005).

<sup>2</sup> The Constitution of India, art. 19.

<sup>3</sup> H. Suresh, *All Human Rights are Fundamental Rights* at 34 (2000).

<sup>4</sup> *Brahma Prakash Sharma v. State of Uttar Pradesh*, (1953) 1 SCC 813.

<sup>5</sup> The Contempt of Courts Act, 1971 (Act 70 of 1971).

## DEFINING THE CONCEPT:

The basic idea of contempt of court and the freedom of speech should be understood to examine the balance between freedom of speech and expression and contempt of court. Article 19(1)(a)<sup>6</sup> of the India Constitution provides the right to freedom of speech and expression to all its citizens. This article of the Indian Constitution plays an essential role in the democracy. It provides rights to its citizen to fairly criticize the government, to participate in public debate and discussions, and to share their own ideas. But Article 19(2)<sup>7</sup> also lays down a few reasonable restrictions on this freedom because of different factors. Different factors like India's sovereignty, its integrity, its security, public morality and order, and, importantly, contempt of court. This balance has always been maintained by judicial interpretations.

SC in the case of *Romesh Thappar v. State of Madras*<sup>8</sup> It held that free speech is the basis of all rights and liberties. Like in *Indian Express Newspapers v. Union of India & Ors.*<sup>9</sup> case, it was held that freedom of the press is essential to Article 19(1)(a)<sup>10</sup>. But these restrictions are not unrestricted, i.e., if any speech results in undermining the justice system due to malicious intent or due to recklessness, then it can be restricted.<sup>11</sup>

The Supreme Court will be a court of record and will have all the authority of a court of record, including the authority to penalize for contempt of itself, according to Article 129<sup>12</sup>. Thus, rather than being a regulation, the Supreme Court's jurisdiction is a constitutional authority. Article 142(2)<sup>13</sup> further gives power to the Supreme Court to make any order necessary for "*the investigation or punishment of any contempt of itself.*" This gives the Court wide powers to ensure complete justice and protect its authority. According to Article 215<sup>14</sup>, each High Court is a court of record and, like the Supreme Court under Article 129<sup>15</sup>, has the power to punish for contempt of itself. This shows that the Supreme Court and High Courts have contempt authority rather than legislative authority.

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<sup>6</sup> The Constitution of India, art. 19(1)(a).

<sup>7</sup> The Constitution of India, art. 19(2).

<sup>8</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>9</sup> *Indian Express Newspapers v. Union of India* (1985) 1 SCC 641.

<sup>10</sup> *Id.*, art. 19(1)(a).

<sup>11</sup> S. P. Sathe, "Freedom of Speech and Contempt of Court" 5 *Economic and Political Weekly* 1741 (1970).

<sup>12</sup> The Constitution of India, art. 129.

<sup>13</sup> The Constitution of India, art. 142(2).

<sup>14</sup> The Constitution of India, art. 215.

<sup>15</sup> *Id.*, art. 129.

The actions or statements that undermine the authority and the court's dignity are referred to as contempt of court. It also undermines the integrity of the judiciary, which potentially obstructs the fair administration of justice<sup>16</sup>. The Contempt of Courts Act, 1971, defines two different types of contempt.

There are two types of contempt of court:

1. Criminal Contempt of Court
2. Civil Contempt of Court

Under Section 2(b) of the Contempt of Courts Act, 1971<sup>17</sup>, civil contempt has been defined. A person who disregards a court's order is usually found in civil contempt. To obey the court order that was disobeyed by the offenders, the judges use civil contempt sanctions in these situations. Under section 2(c) of the Contempt of Courts Act, 1971<sup>18</sup>, Criminal contempt is defined. Harsh penalties are imposed for criminal contempt of court. These accusations, which punish the offender regardless of what happens in the existing judicial procedures, are meant to deter such behaviour in the future. In *Brahma Prakash Sharma v. State of Uttar Pradesh*<sup>19</sup> case, the Supreme Court held that the main aim of the contempt of court is to protect the administration of justice from deteriorating rather than to safeguard the judges from personal injury.<sup>20</sup>

Freedom of speech and contempt powers conflict with each other because the former permits the criticism of public institutions, and on the other hand, the latter restricts the actions that undermine the judicial authority. This has led to a constitutional dilemma. This dispute must be settled in a way that preserves the administration of justice at the minimal sacrifice to free expression.<sup>21</sup> In the case of *EM. Sankaran Namboodiripad v. T. Narayanan Nambiar case*<sup>22</sup>, the Chief Minister of Kerala made some statements disrespectful towards the courts. The chief minister was punished for contempt of court, but also allowed fair and reasonable criticism.

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<sup>16</sup> Harvinder Kaur, "Freedom of Speech vis-à-vis Contempt of Court: An Analysis" 7 *International Journal of Law Management & Humanities* 61 (2024).

<sup>17</sup> The Contempt of Courts Act, 1971 (Act 70 of 1971), s. 2(b).

<sup>18</sup> The Contempt of Courts Act, 1971 (Act 70 of 1971), s. 2(c).

<sup>19</sup> *Id.* at 4.

<sup>20</sup> A.P. Rajesh, "CONTEMPT OF COURT- POSITION OF BAR AND BENCH" 2 *International Journal of Research and Analysis* 71 (2014).

<sup>21</sup> S.P. Sathe, "Freedom of Speech and Contempt of Court" 5 *Economic and Political Weekly* 1741 (1970).

<sup>22</sup> *EM. Sankaran Namboodiripad v. T. Narayanan Nambiar*, AIR 1970 SC 2015.

The activist's comments against judges were punished by the court in *Arundhati Roy*<sup>23</sup>, bringing back discussions over whether the contempt legislation restricts free speech. These conflicting decisions show how the ratio of upholding power to allowing criticism has changed throughout time.<sup>24</sup>

## LITERATURE REVIEW

In the article "*Freedom of Speech and Contempt of Court*"<sup>25</sup>, written by S. P. Sathe, he critically examines the Indian law of contempt and suggests that an excessive reliance on contempt powers poses a danger of eroding the democratic ideal of free speech. He emphasizes that contempt should only be applied in cases when there is actual and significant interference with the administration of justice, not only when judges or judicial operations are being criticized. The author also highlights the necessity of establishing an essential balance between judicial authority and public responsibility using the matters within the framework of constitutional safeguards under Article 19(1)(a).

The article "*Contempt of Court - Bar on Freedom of Speech or Necessary Evil?*"<sup>26</sup> written by Dr. Rabbiraj C & R.K. Rajkhanna, discusses whether contempt of court restricts free speech or if it is a "necessary evil" to uphold the judiciary's dignity. The author also mentions that contempt powers need to be applied cautiously in order to protect democratic free expression rights, citing the 2006 Amendment.

The article, "*Freedom of Speech vis-à-vis Contempt of Court: An Analysis*",<sup>27</sup> written by Havinder Kaur, discusses the conflict between freedom of speech under Article 19 (1)(a) and the contempt powers of the court under Article 129 and 215 of the Indian Constitution. This article also discusses the difference between fair comment and contempt. Also, the author in this article discusses the inconsistencies in judicial cases and analyzes the amendment of 2006, which talks about the truth as a defence.

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<sup>23</sup> *Arundhati Roy, In Re*, (2002) 3 SCC 343.

<sup>24</sup> <https://lawandotherthings.com/contempt-of-court-arundhati-roy-case/> (last visited on September 21, 2025).

<sup>25</sup> S. P. Sathe, "Freedom of Speech and Contempt of Court" 5 *Economic and Political Weekly* (1970).

<sup>26</sup> Dr. Rabbiraj C and R.K. Rajkhanna, "Contempt of Court – Bar on Freedom of Speech or Necessary Evil?" 3 *Chanakya Law Review*, (2022).

<sup>27</sup> Harvinder Kaur, "Freedom of Speech vis-à-vis Contempt of Court: An Analysis" 7 *International Journal of Law Management & Humanities* 61 (2024).

## ANALYSING THE DEVELOPMENT:

### 1. EARLY AND FOUNDATIONAL JUDICIAL APPROACH: DEFERENCE TO THE COURT'S INSTITUTIONAL PRESTIGE

In the case of *Brahma Prakash Sharma v. State of UP (1954)*<sup>28</sup>, the SC held that the presence of an offending publication that could hinder the judiciary's capacity to operate properly constitutes sufficient evidence of a real violation of the rule of law. Similarly, in the case of *C.K. Daphtary v. O.P. Gupta*<sup>29</sup>, if the court gives any decision that has been unfairly criticized, then it would be considered as contempt of court since such criticism could affect the public's confidence in the judicial system. These case laws show that not all criticism can be protected by the Constitution when it deviates from malicious allegations that erode the public confidence in the judiciary's independence.

In the case of *EM. Sankaran Namboodiripad v. T. Narayanan Nambiar*<sup>30</sup>, the Chief Minister of Kerala made some statements disrespectful towards the courts. The chief minister was punished for contempt of court.<sup>31</sup> The court also ruled that freedom of speech does not extend to statements that scandalize the judiciary.<sup>32</sup> However, in *Perspective Publications (P) Ltd. v. State of Maharashtra (1971)*<sup>33</sup> case, the court held that "mere defamatory criticism" of a judge is not considered as contempt unless it materially alleges the administration of justice. But this also included an exception that only insulting remarks that have a direct impact on the functioning of the legal system will qualify as contempt.

### 2. STATUTORY DEVELOPMENTS

#### THE CONTEMPT OF COURTS ACT, 1971.

In 1971, the Contempt of Courts Act was enacted to consolidate and amend the law that defined two different types of contempt. First, the civil content and others as criminal contempt. The latter involves undermining or scandalizing the court's authority and obstructing the court's proceedings and administration of justice. Although the Contempt of Courts Act brought some clarity related to its scope, like specifically, "scandalizing the court", it remains difficult. The

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<sup>28</sup> *Id.* at 4.

<sup>29</sup> *C.K. Daphtary v. O.P. Gupta*, (1953) 1 SCC 813.

<sup>30</sup> *Id.* at 22.

<sup>31</sup> S.P. Sathe, "Freedom of Speech and Contempt of Court" 5 Economic and Political Weekly 1741 (1970).

<sup>32</sup> G.V. Mahesh Nath and Audhi Narayana Vavili, "Contempt of Court and Free Expression – Need for a Delicate Balance", 7 *International Journal of Law Management & Humanities* 62 (2008).

<sup>33</sup> *Perspective Publications (P) Ltd. v. State of Maharashtra*, AIR 1971 SC 221.

provisions gave judges broad discretion to punish speech that was disparaging of judges or their judgment. This was criticized because it may have a negative impact on independent democracy and the press.<sup>34</sup>

### **2006 AMENDMENT:**

As a result of growing criticism, the act was amended in 2006<sup>35</sup> to include two important concepts. The defence of truth was added in section 13(b)<sup>36</sup>. The amendment clarified that truth might be used as a defence in contempt cases if it was made with good intentions and was made in the public interest. Truth was not taken into consideration in the past as a defence; therefore, even speech that was true to reality or true to the facts but critical could face consequences. This amendment was seen as a significant change in bringing the contempt law into line with democratic principles.

Another amendment that was significant was Section 13(a), i.e., substantial interference.<sup>37</sup> The amendment made it clear that unless contempt "substantially interferes, or tends substantially to interfere with the due course of justice," it should not be punished. This restricted the scope of criminal contempt and made it impossible to prosecute minor or procedural violations.

### **3. EVOLVING JUDICIAL JURISPRUDENCE**

There had been uneven evolution in balancing contempt and speech cases post-1971. Judicial decision reflects a gradual change in these matters. In the case of *P.N. Duda vs. Shiv Shanker (1988)*<sup>38</sup>, the court held that the statement was a form of fair criticism, and therefore, the critical statement made by the law minister against the judiciary did not amount to contempt of court. The court recognised that the decisions of judges must be subject to public scrutiny and debate, provided that it does not undermine the functioning of justice.

In the case of *Supreme Court Bar Association v. Union of India (1998)*<sup>39</sup>, which is one of the landmark cases, Supreme Court held that, despite having full and unlimited jurisdiction under

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<sup>34</sup> Government of India, "Report of the Committee on Contempt of Courts Act, 1963," (Ministry of Law, 1963).

<sup>35</sup> Harvinder Kaur, "Freedom of Speech vis-à-vis Contempt of Court: An Analysis" 7 *International Journal of Law Management & Humanities* 66 (2024).

<sup>36</sup> The Contempt of Courts Act, 1971 (Act 70 of 1971), s. 13(a).

<sup>37</sup> The Contempt of Courts Act, 1971 (Act 70 of 1971), s. 13(b).

<sup>38</sup> *P.N. Duda v. P. Shiv Shanker*, (1988) 3 SCC 167.

<sup>39</sup> *Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409.

Articles 129<sup>40</sup> and 142<sup>41</sup>, its contempt power is not unrestricted, i.e., contempt powers are restricted. Also, the court mentioned that, court has the power to punish the advocate for contempt, but it does not have the power to suspend the license as a punishment for its contempt in order to have disciplinary control over them, because the Advocates Act of 1961 gives the Bar Council the sole power to do so. This judgement plays a very significant role because it prevented the Court from acting beyond the limitations of the constitution and statutes to use its constitutional powers, upholding the rule of law and safeguarding the professional rights.

In *Indirect Tax Practitioners' Association v. R.K. Jain (2010)*<sup>42</sup> case, the court held that a journal article criticising a tribunal's operations did not qualify as contempt. The court emphasized that, simply, freedom of the press and open discussion can guarantee judicial accountability.

Nowadays, with a change in time, there has been a change in the form of speech being delivered, i.e., through different modes, the speech is being delivered in the present scenario. So, with the change in time, the judiciary is also facing difficulties with online expression in recent years. In one of the instances, the Supreme Court has punished one of the senior-most advocates for the case of contempt over the tweets that were being made, which were criticizing the judiciary. It was the case of Prashant Bhushan in 2020. Critics claimed that the ruling expressed that the tweets made by him were undermining the authority of the judiciary. Therefore, after this case, there was a debate about whether "scandalizing the court" should continue in a constitutional democracy, which was revived by the case.

Courts have occasionally used the truth defense to dismiss contempt cases since 2006. In *Bal Thackereay v. Harish Pimpalkhute*<sup>43</sup> (2005, applied later), The court acknowledged that statements made in good faith and statements supported by the facts should be exempted from contempt. However, the requirement to maintain "public interest" still remains significant, which restricts the claim's relevance.

#### 4. TESTS DEVELOPMENTS BY THE COURT

Over the decades, the Indian courts have developed certain standards throughout the years to

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<sup>40</sup> *Id.*, art. 129.

<sup>41</sup> The Constitution of India, art. 142.

<sup>42</sup> *Indirect Tax Practitioners' Association v. R.K. Jain*, (2010) 8 SCC 281.

<sup>43</sup> *Bal Thackereay v. Harish Pimpalkhute*, (2005) 1 SCC 254.

distinguish between fair criticism and severe contempt, accepting that not all criticism of the judiciary compromises its authority. There have been different tests through which the remarks are categorised as fair criticism or as contempt.<sup>44</sup> In the case of *Brahma Prakash Sharma vs. State of UP*<sup>45</sup>, it was held that only fair criticism is permissible, and similarly, in the case of *P.N. Duda v. P. Shiv Shanker (1988)*<sup>46</sup>, it was again clarified that, if any remarks are made in the realm of fair comment, then they would not come under contempt. Therefore, through these cases, the judiciary made a clear distinction between fair criticism and contempt.<sup>47</sup>

The idea of the “Substantial Interference test was integrated into the Contempt of Courts Act, 1971, under section 13<sup>48</sup>, which specifically states that before punishment is justified, contempt must result in “substantial interference with the due course of justice”. In the case of *Perspective Publications v. State of Maharashtra (1971)*<sup>49</sup>, held that “mere defamatory criticism” of a judge is not considered as contempt unless it materially alleges the administration of justice. This was further reinforced by the 2006 Amendment Act, which emphasized that punishment should only be given when there is proven significant interference. However, these tests seek to maintain an ideal balance between protecting the principles of democracy and maintaining the power of the judiciary. nevertheless, their implementation is still uneven, frequently relying on the judge's interpretation of what is inappropriate.

## 5. CHALLENGES

The emergence of digital media presents new challenges. Criticism and false information about courts are becoming more prevalent through online platforms. Legitimate public criticism and malicious misinformation must be distinguished by the judiciary. While disregarding the contempt laws completely could undermine the respect for institutions, applying them strictly in digital platforms raises the risk of restricting free debates.

Judicial restraint is being observed through recent jurisprudence. In certain cases, the High

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<sup>44</sup> G.V. Mahesh Nath and Audi Narayana Vavili, "Contempt of Court and Free Expression – Need for a Delicate Balance", Available at:

[https://www.researchgate.net/publication/228260491\\_Contempt\\_of\\_Court\\_and\\_Free\\_Expression\\_-\\_Need\\_for\\_a\\_Delicate\\_Balance](https://www.researchgate.net/publication/228260491_Contempt_of_Court_and_Free_Expression_-_Need_for_a_Delicate_Balance) (last visited on September 21, 2025).

<sup>45</sup> *Id.* at 4.

<sup>46</sup> *Id.* at 38.

<sup>47</sup> Tanu Priya, "Freedom of Speech and Expression" Available at:

<https://www.lawctopus.com/academike/freedom-of-speech-and-expression/> (last visited on September 25, 2025).

<sup>48</sup> The Contempt of Courts Act, 1971 (Act 70 of 1971), s. 13.

<sup>49</sup> *Id.* at 33.

Court has dismissed the contempt petitions that were against social media users, and states that there is no reasonable interference with justice by the remarks made through digital platforms. However, judicial discretion is heavily relied upon in the absence of statutory clarity.

Demand for reforms is increasing day by day. The act of scandalizing the court should be abolished, according to different scholars, and also some demand that it should be strictly reinterpreted to include only speech that immediately threatens the proceedings of the court.

## **6. CRITICISM, LIMITATIONS, AND SOLUTIONS:**

Because the term "scandalising the court" is so vague, it has drawn a lot of criticism. Judges have a lot of power to decide what is considered contempt. This frequently hinders individuals, scholars, and the media from asking the judiciary questions. There is always an essence of bias because the judges have the discretion to decide the case themselves. India's laws are outdated and strict for these things.

There are certain limitations as well. The distinction between criticism and abusive contempt remains unclear despite different amendments having been made, like the 2006 amendment that introduced defences like "truth" and the "substantial interference" test. These defences are interpreted differently and mostly at the discretion of the judge. Also, there is a lack of public awareness about fair criticism, which leads to unintentional breaches. Additionally, the citizens, the press, the journalists, and civil society are unable to keep the judiciary accountable in a constructive and democratic way due to the strict nature of contempt laws.

There must be a balance between free speech and respect for the courts. Judges should use their powers carefully and they should punish only those who are affecting the integrity of the court or which interferes with justice. The public should be made clearer about what constitutes fair criticism and what constitutes contempt.

## **CONCLUSION**

The struggle between freedom of speech and contempt of court reflects India's Constitutional challenges of maintaining a balance between institutional power and individual liberties. Articles 129 and 215 ensure that justice is not compromised by negligent attacks or disobedience, even while Article 19(1)(a) permits free expression as an essential ingredient of democracy. From the Prashant Bhushan case to the Brahma Prakash Sharma case, the judicial

interpretation shows the changing concepts to achieve the balance between the two most important democratic principles. The Contempt of Courts Act of 1971 and its amendment of 2006, which added the "substantial interference" criterion and "truth" as a defense, are attempts to reconcile these conflicting ideas.

Especially in the digital era, problems still exist where speech gets spread rapidly and quickly, because of which it becomes difficult to differentiate between fair criticism and malicious contempt. The judiciary must continue to exercise restraint and only use its contempt powers when absolutely required to safeguard the administration of justice. Also, to make the law more effective with the ideas of democratic standards or principles, we should expand the scope of the word "scandalizing the court". However, upholding the rule of law and individuals' freedom of speech and expression are essential to maintaining the public confidence in the judicial system and maintaining the democratic spirit of the country.

