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“CONTEMPT, COERCION, AND DIGNITY: RE-EXAMINING THE APOLOGY JURISPRUDENCE”

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Abstract

The law of contempt of court plays a crucial role in preserving the authority, dignity, and effective functioning of the judiciary. At the same time, its broad scope and discretionary application have raised serious concerns regarding its impact on freedom of speech and individual dignity. One particularly debated aspect of contempt jurisprudence is the judicial insistence on apologies from alleged contemnors, often as a condition for leniency or closure of contempt proceedings. This paper examines whether such enforced or compelled apologies operate as a form of coercion rather than genuine remorse, thereby undermining the constitutional values of dignity and free expression. Through a doctrinal and case-law analysis of landmark judgments, the paper explores the fine line between protecting judicial authority and suppressing legitimate criticism. The paper engages with the evolving judicial understanding of contempt and its interface with constitutional freedoms in a democratic society. Rather than treating contempt solely as a mechanism for enforcement or discipline, the discussion raises deeper questions about power and authority. Ultimately, the paper aims to contribute to an ongoing conversation on recalibrating contempt jurisdiction in a manner that aligns judicial authority with constitutional dignity, while leaving room for principled disagreement and democratic engagement.

Keywords: *Contempt of Court; Judicial Dignity; Apology as Coercion; Freedom of Speech; Judicial Accountability*

Introduction

In a constitutional democracy, the legal system plays a central role in maintaining public order and safeguarding individual rights. The judiciary, as a constitutional authority has the duty to uphold the rule of law and protect the rights of citizens. In order to function effectively, the courts are given certain powers with the purpose of preserving their authority and ensuring the

smooth administration of justice. One such power is the law relating to contempt of court, which seeks to protect the dignity, authority and institutional integrity of the judiciary.

The law of contempt is made to prevent wilful disobedience of court orders and to safeguard the judicial process from acts that may undermine public confidence in the courts. Broadly, it operates in two forms: civil contempt, which is related to intentional non-compliance with judicial orders, and criminal contempt, which is related to the acts or publications that scandalise the court or interfere with the administration of justice. While these provisions are intended to secure the effective functioning of the justice delivery system, they have increasingly become the subject of debate within the legal community.

There is an ongoing debate within the legal community concerning contempt jurisprudence, particularly with respect to the wide discretion given to the judges in determining what constitutes contempt. In this context, the practice of requiring apologies from alleged contemnors raises significant concerns relating to voluntariness, coercion, and individual dignity. Where an apology is given primarily to avoid punishment, its legitimacy becomes doubtful, and issues relating to free speech come into question. Such practices also risk discouraging or suppressing genuine criticism of judicial functioning. It is within this context that this paper examines the law of contempt and its contemporary application.

Legal Framework of Contempt of Court

The institution of the judiciary is built upon the trust, respect, and authority conferred upon it by the Constitution and other laws. The judiciary functions through the powers granted to it under the Constitution, as well as the confidence and authority placed in it by the citizens of India. The faith of the citizens in the judiciary forms the basis of the power and authority that it has in the country. It can continue to function effectively only so long as the citizens maintain faith in the institution and respect the authority of the courts.

In common usage, contempt of court refers to any wilful disobedience or disregard of a court order, or any misconduct that interferes with the administration of justice or undermines the dignity of the court. Such conduct, if permitted, has the potential to erode public confidence in the judiciary and adversely affect the administration of justice. Where a person disobeys the orders of a court or acts in a manner that undermines its authority, such conduct may amount to contempt of court.

Section 2(a) of the Contempt of Courts Act, 1971 classifies contempt of court into civil contempt and criminal contempt. Civil contempt, as defined under Section 2(b) of the Act, refers to the wilful disobedience of any judgment, decree, direction, order, or other process of a court. It also includes the wilful breach of an undertaking given to a court. In essence, such conduct reflects a refusal to accept the authority of the court. A person found guilty of civil contempt may be punished with simple imprisonment for a term which may extend up to six months, or fine or both. Civil contempt plays an important role in maintaining the dignity and authority of the judiciary. A court order is not merely advisory in nature; it is binding upon the parties concerned. If court directions are routinely disregarded or refused to be followed, then the authority of the courts is challenged and the entire justice delivery system would collapse. The authority of courts exists only so long as their orders are respected and complied with. For instance, if a court directs an individual to vacate a property or pay maintenance to a spouse and the individual wilfully refuses to comply, such conduct would amount to civil contempt. The primary purpose of punishment in cases of civil contempt is to uphold the dignity and authority of the court.

It is significant to note that civil contempt requires wilful and deliberate disobedience of a court order. Accordingly, if a person is unable to comply with a judicial order due to reasonable causes or circumstances beyond his control, such non-compliance would not constitute civil contempt.

Section 2(c) of the Contempt of Courts Act, 1971 defines criminal contempt as the publication of any matter, or the doing of any act, which tends to scandalise or lowers the authority of the court, or interferes or tends to interfere with the due course of judicial proceedings or the administration of justice. Thus, where an individual wrongfully and with mala fide intention targets the credibility of judges or the authority of the court, such conduct may attract liability for criminal contempt, which is punishable with imprisonment up to six months or fine or both. For example, if a person knowingly publishes an article containing false allegations accusing a judge of bribery or bias, such conduct would amount to criminal contempt. These provisions serve to protect judges from false and malicious accusations that may damage the independence and reputation of the judiciary. Criminal contempt directly affects not only the authority of the court but also obstructs the administration of justice. Similarly, acts such as making public speeches or circulating content that threatens or intimidates judges also constitutes interference with the administration of justice and falls within the scope of criminal contempt.

At the same time, it is important to recognise that fair criticism of judicial decisions does not amount to contempt. Once a judgment is delivered, it becomes a public property, which is open to public discussion and scrutiny. If criticism of a judgment is made in a respectful, factual, and bona fide manner, it falls within the legitimate exercise of freedom of speech and does not constitute criminal contempt. Section 5 of the Contempt of Courts Act expressly protects fair criticism of judicial acts. For instance, expressing the view that a judgment lacks adequate reasoning or could have been decided differently does not amount to contempt. However, baseless allegations that lower the dignity of the court or accuse judges of misconduct without evidence would constitute criminal contempt.

The law of contempt is not intended to give any special privilege to judges, but rather to protect the integrity of the judicial institution and ensure that the process of justice delivery remains uninterrupted. However, the critics of contempt jurisprudence, argue that the law is potentially dangerous due to the extensive power it grants to judges in determining what constitutes contempt. The law is often described as both necessary and problematic, necessary because no institution can function if its authority is freely undermined, and problematic because it gives substantial discretion to judges to define the limits of acceptable criticism. Since the statute itself uses broad and open-ended language, especially in defining criminal contempt, courts play a decisive role in shaping what conduct falls within its ambit. As a result, the meaning of contempt has evolved largely through judicial pronouncements rather than through legislative guidance. Courts in India have repeatedly emphasised that the power of contempt must be exercised cautiously and with restraint. At the same time, the absence of clearly demarcated boundaries has led to concerns regarding subjectivity in its exercise.

Judicial Opinion on Contempt of Court

Contempt of court is one of the most debated issues in the legal fraternity, and the judiciary has examined various aspects of contempt through several judicial precedents. The courts have, over time, dealt with both civil and criminal contempt in order to protect the authority and dignity of the judiciary.

In the case of *E.M.S. Namboodiripad v. T.N. Nambiar*¹, the Chief Minister of Kerala made statements alleging that judges favoured and worked for the rich class of citizens and showed

¹ *E.M.S. Namboodiripad v. T.N. Nambiar* AIR 1970 SC 2015

bias in their functioning. The court held that such statements had the tendency to harm the image and reputation of the judiciary in the eyes of the public and can have a negative impact on public confidence. Thus, he was convicted for criminal contempt and fined. While deciding the case, the Court recognised that freedom of speech is a fundamental right of citizens; however, it emphasised that the right is subject to reasonable restrictions and is not absolute.

In *Delhi Judicial Service Association v. State of Gujarat*², a Judicial Magistrate was publicly paraded and assaulted. Taking note of the seriousness of the act, the court held that it was a grave violation of the dignity of the Judicial Magistrate and severely undermined the authority of the judiciary in India. Accordingly, the prime accused were sentenced to six-month imprisonment for criminal contempt.

In *M.S. Ahlawat v. State of Haryana*³, the accused was a government servant who failed to comply with the orders of the court. The court held that deliberate non-compliance with judicial orders disrupts the rule of law and that strict action must be taken through contempt proceedings.

In *Hari Singh Nagra v. Kapil Sibal*⁴, a senior advocate wrote a note to members of the Bar during an event, expressing concerns about a decline in standards within the judiciary and the loss of public faith and confidence. Subsequently, excerpts from the note were published in a newspaper. When the matter came before the court, it was held that the statements were not defamatory or motivated by mala fide intent and constituted permissible criticism protected under freedom of speech.

In *M.V. Jayarajan v. High Court of Kerala*⁵, a person used abusive language while speaking about a judgment and the judges concerned. The Court held that such conduct amounted to criminal contempt and convicted him for criminal contempt.

In the case of *In Re: Prashant Bhushan*⁶, a senior advocate made certain tweets criticising the Chief Justice of India for riding a motorcycle during the COVID-19 lockdown. The court found

² *Delhi Judicial Service Association v. State of Gujarat*, AIR 1991 SC 2176

³ *M.S. Ahlawat v. State of Haryana*, AIR 2000 SUPREME COURT 168

⁴ *Hari Singh Nagra v. Kapil Sibal* (2010) 7 SCC 502

⁵ *M.V. Jayarajan v. High Court of Kerala* 2015 (4) SCC 81

⁶ *In Re Prashant Bhushan*, *Suo Motu Contempt Petition (Crl.) No. 1 of 2020*

the conduct to amount to contempt and imposed a fine of Rs. 1 as a symbolic punishment.

In the case of *Aswini Kumar Ghose v. Arabinda Bose*⁷, the court said that a fair comment or fair criticism of a judgement made in good faith is permissible, but any attempt to erode the court's authority is punishable.

In the case of *Rama Dayal Markarha vs State Of Madhya Pradesh*⁸, the supreme court held that fair and reasonable criticism of a judicial decision is permissible and forms part of the constitutional guarantee of free speech. The court said that even courts and judges are not immune from scrutiny, and even harsh criticism of judgments does not amount to contempt so long as it is made in good faith, with reasonable courtesy. The court said that application of contempt law should be done with caution and restraint, so as to balance free speech and judicial independence.

In the case of *P.N. Duda v. P. Shiv Shankar*⁹, the court said that even strong or politically loaded criticism of the judiciary does not amount to contempt of court so long as it does not create an imminent and real danger of undermining the administration of justice or destroying public confidence in the courts. The court held that judges and the judicial system are open to public scrutiny. The court said that fair and reasonable criticism of the judgements is protected, provided it does not attribute improper motives to individual judges or scandalise the court in a way that hampers justice.

In the case of *Anil Ratan Sarkar & Ors vs Hirak Ghosh*¹⁰, the court while dealing with a civil contempt case, where the orders of the court were not followed by one of the parties, the court said for application of contempt, mere disobedience is not enough; there should be a wilful disobedience of the order of the court to constitute civil contempt. The court said if there is a bona fide doubt, confusion, or 2 reasonably possible interpretations of the order, and the contemnor has acted on one of them, contempt will not lie. The court said that contempt power must be used with caution, the court said that contempt is a powerful weapon which should be exercised with great caution for the interest of administration of justice, not as a routine response to every breach.

⁷ *Aswini Kumar Ghose v. Arabinda Bose*, AIR 1952 SC 369

⁸ *Rama Dayal Markarha vs State Of Madhya Pradesh*, AIR 1978 SC 921

⁹ *P.N. Duda v. P. Shiv Shankar*, 1988 SCC (3) 167

¹⁰ *Anil Ratan Sarkar & Ors vs Hirak Ghosh*, AIR 2002 SC 1405

Rethinking Contempt in a Constitutional Democracy

The authority of courts is one of the foundational pillars of the rule of law, based on which our constitutional democracy stands. The judiciary, along with the Constitution, also gets its powers from the faith and trust that the citizens of India have placed in it. If judicial authority is undermined, then the entire system of justice risks losing its legitimacy, which will lead to disorder and loss of democratic principles in the society. Respect for court orders and judicial institutions is essential for the survival of legal order itself.

At the same time, democratic principles equally respect and protect freedom of speech and expression. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression to all citizens, including lawyers, academics, journalists, and ordinary individuals. This freedom includes the right to question, critique, and evaluate judicial decisions. When a fair and reasoned criticism of judgments or judicial conduct is made in good faith, it is not a threat to the judicial authority but rather a means of strengthening judicial accountability.

The jurisprudence on contempt of court has consistently emphasised that its purpose is not to give special privileges to judges or to protect judges from criticism, but it is for the protection of the institution of the judiciary from conduct that interferes with the administration of justice. The institution is harmed when criticism crosses the line into baseless allegations, motivated lies, or acts that erode public confidence in the impartiality of courts. Such conduct put serious risks not just to individual judges, but to the credibility of the justice delivery system as a whole. However, the application of contempt powers demands exceptional caution. The broad and discretionary nature of contempt jurisdiction creates a risk of overreach, particularly where criticism is uncomfortable but constitutionally permissible. When contempt proceedings are initiated in response to dissent or critique, there is a danger that the law may operate as a tool to control and suppress genuine criticism rather than protection of the judicial integrity. This concern becomes evident when apologies are coerced as a means of closure. Thus, this coercion clearly puts a person at a place of vulnerability where, even though he might not have any remorse for his actions, yet still he is forced to issue an apology. This becomes particularly concerning when there was a genuine criticism of the judges or the judgement, the person is coerced to issue an apology to avoid conviction for contempt. An apology given under the threat of punishment lacks voluntariness and loses its moral value. Compelled apologies risk reducing dignity to a bargaining mechanism rather than upholding it as a constitutional value. Accountability is central to the rule of law. Just as citizens are bound to respect court orders,

the judiciary must remain accountable to constitutional principles, including liberty, equality, and dignity. Where contempt powers are used to suppress genuine criticism, the balance moves away from democratic constitutionalism. The legitimacy of contempt law lies not in its severity, but in its restrained and principled application. The freedom of speech and judicial authority, both are equally important in a democratic constitutional society, and one cannot be given priority over another. Both the values must coexist and reinforce each other. Maintaining this balance is not merely a legal necessity but a democratic obligation.

Suggestions

The Law Commission of India, while examining the issue of contempt in its 274th Report, 2018 titled, “Review of the Contempt of Courts Act, 1971¹¹”, it emphasised the need for judicial restraint and cautioned against using contempt jurisdiction in a manner that may have negative effect on free speech. Although the commission ultimately favoured the retention of contempt law, it acknowledged concerns regarding ambiguity and perceptual misuse of the law.

The possibility of the development of structured judicial guidelines to assess contempt allegations should be thought. Factors such as intent, context, language used, platform of expression, and the actual likelihood of interference with justice should be expressly evaluated before initiating contempt proceedings. This would reduce the subjectivity and discretionary power used in the contempt cases.

Further, in cases where criticism is directed at judges or judicial institutions, the incorporation of procedural safeguards may strengthen institutional credibility. There should be an advisory reference to retired judges or eminent jurists could reduce the perception of self-adjudication and reinforce public confidence in the fairness of the process.

Finally, courts should exercise caution in treating apologies as a primary remedial tool in contempt cases. Where harm to judicial authority is minimal, reasoned clarification or dismissal may often serve justice better than formal punishment.

¹¹ Law Commission of India, Report No.274, “Review of the Contempt of Courts Act, 1971”, available here <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081672.pdf>

Conclusion

The law of contempt of court is an essential legal tool aimed at preserving the authority, dignity, and institutional integrity of the judiciary. Public faith and confidence in the courts form the very foundation of the justice delivery system. If court orders are disobeyed or disregarded, or if judges are subjected to baseless attacks and defamation, the authority of the judiciary would be severely undermined which would ultimately weaken the rule of law. The law of contempt seeks to ensure that no individual acts in a manner that lowers the authority of the courts or interferes with the due administration of justice.

At the same time, it is equally important to ensure that the power of contempt is not exercised arbitrarily or used as a tool to suppress legitimate and fair criticism of judicial actions. The Constitution of India guarantees freedom of speech and expression as a fundamental right under Article 19(1)(a). This right extends to all citizens and includes the right to express fair criticism of judicial decisions and the functioning of the judiciary. A democratic legal system cannot function effectively if genuine criticism is perceived as contempt.

In its present form, the law of contempt gives a lot of discretionary power to judges to determine what constitutes contempt, which creates a risk of overreach of the application of law of contempt. Thus, there is a need for greater clarity and reduced ambiguity in contempt jurisprudence, so that only those acts driven by mala fide intent and which genuinely threaten the administration of justice are punished. Individuals engaging in honest, reasoned, and good faith criticism must be adequately protected. Ultimately, the balance must always be maintained between safeguarding the dignity of the judiciary and upholding the fundamental right to free speech, as both are equally important pillars of a constitutional democracy.

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