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# **Title of the Paper- Contempt Law: Court Scandal Prevention or Court Scandal to Limit Free Speech?**

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## **Contempt Law: Court Scandal Prevention Or Court Scandal To Limit Free Speech?**

### **<sup>1</sup>Abstract**

The purpose of this research paper is to make a constructive comparison between contempt of court and freedom of speech and expression. The courts, as the institution charged with interpreting the law, must interpret what constitutes its own contempt, as well as the extent and circumstances under which freedom of speech can be curtailed. So, there is a conflict between contempt of court and freedom of speech and expression, and in various circumstances, courts have chosen different explanations interpreting what should and should not amount to contempt. This research paper explains the scope of the right to free expression while contrasting it with contempt law, as well as the history of contempt law and the various provisions of the Contempt of Courts Act, 1971.

This research paper also includes a detailed examination of the "one rupee contempt case," i.e., the 2020 contempt case involving Adv. Prashant Bhushan. This case was an excellent example of the flaws and ambiguity in India's contempt law.

In a shocking turn of events, when the public was forced to sit at home, diplomatic statements were issued in this case, and in the end, Bhushan had to pay the consequences for the offence for which he was found guilty, as well as a hefty fine of Rs. 1.

In today's world, it's critical to understand the scope of one's rights, as well as when and to what extent they can be curtailed. So, in India, what is the law of contempt, the prevention of court scandalization, or a scandal to stifle free speech?

Keywords-Scandal, Contempt, Offense, Free Speech, and the Judiciary.

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## Introduction

The purpose of a concept like contempt of court is to prevent unfair criticism of the judiciary and to protect the institution's reputation. Contempt of court is regarded as a serious offense that disrupts the harmony of the court and its administration of justice, but each citizen is guaranteed fundamental rights such as free speech. Furthermore, the irony is that the court must determine what constitutes a contempt of court offense (i.e., what tends to lower its dignity or authority), and the court must also protect our fundamental rights while determining the extent to which they can be exercised.

The Contempt of Courts Act of 1971 was enacted as the first statute to specify the term "contempt of court." Contempt of court, according to Corpus Juris Secundum, is disobedience to the court by acting in opposition to its authority, justice, and dignity. It denotes wilful disregard for or disobedience of a court's order.

## II. The Extent Of Freedom Of Speech Under Art-19 (A)

### I. Right to "Freedom" of Expression and Speech

Every Indian citizen has the right to free speech & expression under Article 19(1)(a) of the Indian Constitution. This freedom includes the right to freely express one's opinion through word of mouth, writing, printing, pictures, electronic media, or any other means addressed to the eyes or ears. It would thus include, in addition to press freedom, the ability to express one's ideas and opinions through visible representations such as gestures & the like.

This means that the right to free speech & expression includes the freedom to spread an individual's ideas and opinions, as well as their circulation and publication<sup>2</sup>. It includes the right to criticize someone for holding opposing views and the right to respond to such criticism. As a result, any citizen can acquire or share ideas and information about topics of common interest.

### (B) Reasonable Restrictions on Free Expression

The aforementioned fundamental right granted to citizens is not absolute, and clause (2) of Article 19 imposes some reasonable limitations on this right. Contempt of court is one of the restrictions imposed on every citizen's right to free speech and expression.

This restriction may be imposed if the right is violated by making a malicious or libellous remark that attempts to foster orderly proceedings and undermines the integrity of the court. However, this does not mean that judges are immune to legitimate criticism<sup>3</sup>. Section 5 of the Contempt of Court Act, 1971 states that publishing a fair criticism of a judicial act that has been heard and a decision has been reached does not constitute contempt.<sup>4</sup> *Brahma Prakash Sharma and Others v. State of Uttar Pradesh*, According to the Supreme Court, "the attack on the judge is a wrong done to the public, and it tends to create apprehension in the minds of people regarding the judge's integrity, ability, and fairness."

### (C) Scope of Free Expression (Article 19) and Contempt of Courts Act

The right to free Article 19(1)(a) guarantees freedom of expression is regarded as one of the most valuable rights conferred by the Constitution, but respect for judicial independence is also essential. What if the criticism levelled at the court tends to diminish its authority? Section 5 of the 1971 Contempt of Court Act states that fair criticism does not constitute contempt if made after the case has been heard and decided.

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<sup>2</sup>Romesh Thappar v. State of Madras, AIR 1950 SC 124.

<sup>3</sup>In Re: S. Mulgaokar, (1978) 3 SCC 339

<sup>4</sup>Brahma Prakash Sharma and Others v. State of Uttar Pradesh 1954 AIR 10

As a result, the judiciary is not immune to criticism; however, criticism should be fair and should not be delivered in a way that appears to undermine public trust in the judiciary<sup>5</sup>. Freedom of expression cannot prevail where contempt is malicious, substantial, or manifest<sup>6</sup>. Because freedom of expression is not absolute and has limitations imposed by Article 19, (2). The line between free speech and contempt of court is thin. It is determined by the speaker's intention. Because words are the skin of the language, the words they use serve as determinants.

As a result, Article 19(1)(a) guarantees Freedom of Speech and Expression for all citizens of the country, and provisions under Article 129 and Article 142(2) of the Indian Constitution cannot override Article 19(1)(a) and 19(2) of the Indian Constitution, because Article 19 falls Part III of the Constitution of India ( FR), which falls under basic structure of the Constitution. As a result, free speech is a highly valued right that is necessary for democracy. In a democracy, there is also a right to dissent, which is part of the right to free expression. A democratic country allows people to form their own opinions.

#### **(D) Right to Free Expression vs. Judiciary**

Criticism of a judge's actions (even if it's a strong one) is not contempt as long as it is made in good faith, temperately, and fairly, but it should not be directed to a Judge's personal character or the impartiality of a Judge or Court<sup>7</sup>. At the same time, freedom of expression cannot be equated with the right to make reckless and unfounded accusations against the judiciary<sup>8</sup>. Healthy criticism is acceptable if it is constructive, honest, and, most importantly, expressed in respectful language. As a result, criticism cannot be hostile in nature, undermining or tending to undermine public trust in the administration of justice. To determine public interest and good faith, the Court must consider all of the circumstances surrounding the person responsible for the comments, including the person's understanding of the comments and the purpose in the field that he intended to achieve.

If a citizen, while exercising their right to free expression guaranteed by Article 19(1), tries to undermine the dignity of the court and undermine people's trust in the judiciary, the Supreme Court and High Courts are free to use powers conferred by Article 215 or Article 129, as the case may be. It makes no difference whether the act was committed in good faith or without malice; what matters is that the offending act became or has the potential to become a hindrance in the effective operation of the court and interfere with the administration of justice. These are neither relevant nor relevant as a defense to contempt of court<sup>9</sup>. The law punishes all acts that not only obstruct but also have the potential to harm the administration of justice<sup>10</sup>.

#### **(E) Judge Defamation and Contempt of Court**

Will slandering a judge in a purely administrative matter amount to contempt of court? In <sup>11</sup>Baradakanta v. Registrar, High Court of Orissa, the High Court of Orissa held that it amounted to contempt, and thus the appellant was convicted of contempt of court. The court always welcomes constructive criticism, but it must be made in good faith and in the best interests of the general public. If a judge's decision or decree in a case is criticized with malice and is not in the best interests of the public, but only to harm the judge's reputation, it may amount to contempt.

<sup>5</sup> In Re: S. Mulgaokar, (1978) 3 SCC 339

<sup>6</sup> Samuel Roth v. United States of America L. Ed. 2d 1489

<sup>7</sup> C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, (1995) 5 SCC 457.

<sup>8</sup> Radha Mohan Lal v. Rajasthan High Court, AIR 2003 SC 1467.

<sup>9</sup> D.C Saxena v. Hon'ble Chief Justice of India, (1996) 5 SCC 216

<sup>10</sup> E. M. Sankaran Namboodiripad vs T. Narayanan Nambiar, AIR 1970 SC 2015.

<sup>11</sup> Baradakanta v. Registrar, High Court of Orissa, AIR 1974 SC 710.

The offense of contempt of court is more serious than defamation and has a distinct personality. Contempt of court is not only an offense against the judge, but it is also an offense against the public at large by undermining the authority of the court<sup>12</sup>. Defamation is considered contempt of court when the act of defaming the judge interferes with the administration of justice. However, contempt can also include defamation. Truth can be pleaded as a defense in both contempt and defamation proceedings,<sup>13</sup> but the speaker will not be protected by the constitutional right if the speech is untrue and reckless as to its truth.

#### **F. Inappropriate Gestures and Misbehaviour in Court**

The motive or mensrea of an act is irrelevant in contempt proceedings, it is repeatedly stated. Section 2(c)(i) defines criminal contempt as any act that scandalizes or undermines the authority of any court. Using foul language, making inappropriate gestures, or shouting in the courtroom may amount to criminal contempt. This misconduct must be stopped because it has the potential to infect bar members across the country. As a result, provisions were made to limit these practices. No one, regardless of position, is immune from this offense. India has a court hierarchy, with each court entrusted with disciplinary control over the one below it. In *L.D Jaikwal v. State of U.P.*,<sup>14</sup> the Allahabad High Court held that the use of abusive language by the advocate in pleadings vilified the judge and amounted to contempt under Section 2(c) (i). In *K.A Mohammed Ali v. C.N. Prasanaan*<sup>15</sup>, the accused used derogatory language against the judge and raised his voice unusually high during the trial. He was found guilty of the crime of contempt of court. Advocates are punished for their misconduct in order to prevent similar incidents from occurring in the future. Because these acts are likely to embarrass the judge while he is carrying out his judicial duties.

## **II. Contempt Law History**

#### **(A) Report of the Sanyal Committee**

The system of contempt law in India is of English origin. The indigenous legal system of courts in India, founded on the concept of sovereign law above his courts. It was an offense to scandalize or defame the King, the King's Council, or any other courts or assemblies, according to Kautilya. Under Lord Minto's administration in 1908-09, it was recommended to the governments of all provinces that legislation be drafted to allow High Courts to protect themselves from contempt of court and allow the High Courts to provide reasonable protection to all subordinate courts in terms of contempt of court and improper commenting on pending cases.

#### **(B) Contempt of Court Act of 1926**

In retrospect, the 1926 Act can be considered a step in the right direction. The most important contribution of this law is that it imposes certain limits on the penalties for contempt of court. Undoubtedly, the intention is to apply these restrictions regardless of whether the court's contempt is directed to the higher courts or its sub-courts. However, the punitive powers under section 3 apply only to contempt of lower court interpretations, and this act was amended in 1937 to specify restrictions that apply in all cases.

<sup>12</sup> *Bathina Ramakrishna Reddy v. State of Madras*, AIR 1952 SC 149

<sup>13</sup> *Dr. Subramaniam Swamy v. Rama Krishna Hedge*, (2000) 10 SCC 331.

<sup>14</sup> *L.D. Jaikwal vs State of U.P.*, AIR 1984 SC 1374.

<sup>15</sup> *K.A. Mohammed Ali v. C.N. Prasanaan*, 1991 CriLJ 2194

**(C) The Courts Contempt Act of 1952**

The High Court has the authority under this Act to punish subordinate court contempt. The Contempt of Court Act, 1926, which was in effect in the states of Rajasthan and Saurashtra, was repealed by this Act. Despite the fact that the Act was expanded to include the entire country of Bangladesh. Despite the fact that these Acts were passed earlier, they do not define the term "contempt," and there is still much ambiguity surrounding the law of contempt. This law must be addressed in light of two fundamental rights guaranteed by our Indian Constitution: (i) freedom of expression and (ii) personal liberty.

**(D) Contempt of Courts Act OF 1971****(A) What exactly is contempt of court? (2nd Section)**

Nobody can be allowed to interfere with the due course of justice or lower the Court's prestige or authority when exercising a person's right to free speech and expression. Although the term "contempt of court" is not defined in the Constitution, Section 2(a) of the Contempt of Courts Act, 1971 states:

"Contempt of court" refers to either civil or criminal contempt."

As a result, the two types of contempt of court are civil contempt and criminal contempt. Wilful disobedience or breach of a court order's undertaking constitutes civil contempt. Criminal contempt is defined as either scandalizing the authority of the court, jeopardizing the due course of a criminal proceeding, or interfering with the administration of justice.

**(B) Innocent Publication (Section 3)**

If a person had no reasonable grounds to believe that the proceeding was pending at the time of publication, that person is not liable for contempt of court. After the case has been heard and decided, it should be made public.

**(C) What does not constitute contempt? Sections 5-7**

- Publication of a fair and accurate report on any judicial proceedings.
- Fair and constructive criticism of the court.
- Publication of information relating to chamber proceedings, unless the information is related to a secret process, discovery, or invention.

**(D) High Courts' Territorial Jurisdiction (Section 10)**

It makes no difference whether the offense was committed within the territorial jurisdiction of the High Court hearing the case. When it comes to the offense of contempt of court, every High Court has the same power, jurisdiction, and authority.

**(E) Punishment (Section 12)**

If a court is satisfied that the act interferes or tends to interfere with the due course of justice, it may impose a punishment that may include simple imprisonment for 6 months, a fine of up to 2,000/-, or both. An apology can either discharge the offender or act as a mitigating factor in the sentence's length.

**(F) Procedure and Procedures (Section 14-15)**

Whenever a person is accused of contempt in front of the Supreme Court or any High Court, the court gives that person an opportunity to defend himself and takes evidence offered by him before ordering punishment or discharge of that person.

When a person is accused of criminal contempt, the court may act on its own or on a motion made by the Attorney General of India or the Solicitor General of India (regarding the Supreme

Court), or the Advocate General of a State (regarding High Courts), or any person with their consent.

#### **(G) Judge's Contempt (Section 16)**

A magistrate, judge, or other person acting in a judicial capacity can be held liable for contempt of his own or any other court. It does not apply to any remark or observation made by a judge in an appeal before a judge of a lower court.

- A criminal contempt appeal must be heard by a bench of at least two judges under section 15 of the act.
- If one year has passed since the indecent occurred, no court shall be obligated to initiate any proceedings.
- This act does not apply to contempt committed in Navya panchayat or any other village court.

### **Iv. The Case Of One (1) Rupee Contempt**

#### **(A) Case Specifics the Twitters**

It all started when Adv. Prashant Bhushan posted a tweet on Twitter on June 27, 2020, stating that democracy in India has been destroyed even in the absence of a formal emergency, and that historians will remember the Supreme Court of India and the last four Chief Justices of India for their roles in this destruction<sup>16</sup>.

Furthermore, on June 29, 2020, he tweeted from his Twitter account about the current Chief Justice of India, CJI S.A. Bobde, riding a 50 Lakh motorcycle belonging to a BJP Leader at Raj Bhavan, Nagpur; he also mentioned that the CJI was not wearing any mask or helmet, while the Supreme Court of India was in lockdown mode, denying citizens their Fundamental right to access justice.<sup>17</sup>

#### **(B) The Decision - Bhushan was found guilty.**

The Apex Court's Hon'ble Bench observed that if an attempt is made to undermine public trust in the judiciary, including the Supreme Court, as the protector of citizens' fundamental rights, such an attempt must be met with vigour. It was also determined that the alleged contemnor's attacks were malicious and not only not just against one or two judges, but against the entire Supreme Court and its operations over the last six years. Such an attack, which fosters dissatisfaction and disrespect for the Supreme Court's authority, cannot be ignored. Furthermore, it was determined that the tweets were based on "distorted facts" and thus were neither genuine nor in the public interest.

### **V. Conclusion**

The term "scandalise," as used in Section 2(c)(i) of the Contempt of Courts Act, 1971, is not defined anywhere, leaving the Supreme Court and High Courts with unrestricted contempt powers. This increases the likelihood of the Courts abusing these powers, rendering the respective Courts' contempt powers arbitrary. Furthermore, on the recommendation of the Law Commission, the offence of scandalising the court was abolished under section 33(1) of the Crime and Courts Act 2013,<sup>37</sup> in 2013. The Law Commission repealed the offense because it violated freedom of expression.

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<sup>16</sup> Twitter, <https://twitter.com/pbhushan1/status/1276710603214610432?lang=en>

<sup>17</sup> Twitter, <https://twitter.com/pbhushan1/status/1277483749739917318?lang=en>

