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SATIRE AND CONTEMPT: AN ANALYSIS

AUTHORED BY - RASHMI SINGH

Introduction To Contempt Law

The law of contempt—both criminal and civil—has significantly changed through time from being seen by a court in England more than 250 years ago as an inherent power of the judiciary¹.

For example: from the acquittal of a law minister over scandalous remarks² to simple inquiry by a traffic constable as to whether the red light on the hood of a Judge's car was authorised³; the use of contempt law in I.R.S. in order to witness this evolution, we must first leave the contours of its origin and travel to India.

The law of criminal contempt, however, is without a doubt the most contentious of the two types of contempt, as we will see throughout this essay. It is important to note that, despite the elimination of criminal contempt in other common law countries like the United Kingdom (the honourable authors of this law)⁴, the Indian judicial system still provides a safe haven for the practise by making the necessary adjustments along the way and, in the truest sense, by pushing it to its limits.

One cannot help but wonder how long the judiciary can test its limits given that this "apparent" draconian law continues to be upheld in the highest levels of the Indian judiciary, especially after much has been said against it⁵. However, one can test these limits for the purpose of academic debate.

¹ Rex v. Almon (1765) Wilmot's Notes, 243

² P.N. Duda v. P. Shiv Shanker 1988 (3) SCR 547

³ High Court of Allahabad v. State of U.P., AIR 1993 All 211

⁴ Crime and Courts Act 2013, Section 33, 2013 c. 22, 2013 (United Kingdom)

⁵ Mriganka Shekhar Dutta & Amba Uttara Kak, Contempt of Court: Finding the Limit, 2 NUJS L. Rev. 55, 72 (2009).

See also: Sumanta Banerjee, Judging the Judges, 37 EPW. 919, 919 (2002); Yashika Sharma & Arvind Sharma, The Need to Revisit Anachronistic Criminal Contempt Laws in India, Bar and Bench

Therefore, I will briefly attempt to argue in this article whether or not a sarcastic remark made against the judiciary under the guise of freedom of speech and expression could result in criminal contempt of court in order to identify said border.

This discussion shall be accomplished by compartmentalising the essay in three distinct parts: In the first part, I resolutely establish that free speech is a fundamental right of every citizen; but at the end of the day, it is not absolute, but only limited, and one such limitation comes in the face of criminal contempt; ensuingly, in the second part of the essay, I seek to demonstrate how satirical references are a new form of free speech, and consequently, I conduct a legal analysis to test the limits of contempt law to see if satire could amount to criminal contempt of court; thereafter, and finally, I conclude by recalling the investigated points and strongly emphasising upon the lenient application of this law to counterbalance the accreditation and abrogation of free speech.

PART ONE: Free Speech & Criminal Contempt Of Court

Freedom of Speech & Expression: Everchanging, but Essentially Fundamentally Limited

The right to free expression is regarded as a crucial component of participatory democracy and has been said to be the cornerstone of all democratic organisations⁶. In light of this, the fundamental purpose of such a right is to grant an individual the freedom to express their own view of society.⁷

This would not only highlight the system's limitations but also stop one-sided information, disinformation, misinformation, and non-information, which has the effect of making a population of misinformed citizens and turning democracy into a farce.⁸

Scandalizing the Majesty of Court: Criminal Contempt

With this in mind, it would be appropriate for us to understand that the law of criminal

⁶ Romesh Thapper v. State of Madras AIR 1950 SC 124

⁷ Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd., (1988) 4 SCC 592

⁸ Union of India v. Assn for Democratic Reforms, (2002) 5 SCC 294

contempt is legal despite Article 19(1) of the constitution. The fundamental right of free expression must be understood and valued in light of its exception.⁹ In this context, "scandalizing the court" must be understood in accordance with section 2(c) of The Contempt of Court Act, 1971, which defines criminal contempt of court as an insult to the majesty of justice that is intended to erode judicial authority and public confidence in the administration of justice.¹⁰

Contempt is also regarded as occurring when someone makes fun of judges—not as people, but as members of the court.¹¹ In essence, this means that any statement—verbal or written—that disparages the authority of the law or casts doubt on the court's ability to hinder the administration of justice will constitute contempt of court.

PART TWO — Evolution Of Free Speech And Testing Its Limits

In this particular segment of the composition, subsequent to establishing satire as a novel (and somewhat precarious) manifestation of unrestricted expression, I shall undertake a juridical examination to address two relevant inquiries: firstly, does the criminal contempt statute extend to satire; and secondly, if it does extend, what is the extent of its applicability? To tackle these

inquiries, I will utilise case laws, jurisprudential analysis concerning contempt law, and a concrete instance of criminal contempt.

Satire: A New Way of Speech

“Satire is to afflict the comfortable and comfort the afflicted” — Josie Long

In the case of *Ashutosh Dubey v. Netflix, Inc.*¹², the Delhi High Court noted that satire is a form of artistic expression. The literary piece employs techniques such as exaggeration to satirise its

⁹ C.K. Daphtary v. O.P. Gupta, [(1971) 1 SCC 626

¹⁰ Arundhati Roy v. Unknown, (2002) 3 SCC 343. See also: DC Saxena v. Hon'ble The Chief Justice Of India, 1996 SCC (7) 21

¹¹ E.M. Sankaran Namboodripad v. T. Narayanan Nambiar (1970) 2 SCC 325. See also: Brahma Prakash Sharma, Supra note 33

¹² Ashutosh Dubey v. Netflix, Inc., (2020) 268 DLT 271

subject. The statement characterises the subject matter as a clever, satirical, and frequently hyperbolic representation.

Leslie Kim Treiger argues that satire embodies a dual nature of being both fictitious and authentic, and is not to be interpreted literally or taken as a false truth. The essence of satire lies in its critical message, which is concealed beneath its factual exterior. The audience comprehends the fundamental nature of satire and interprets it as a viewpoint rather than a factual statement.

In relation to the matter of instruments of satire, the Delhi High Court has pronounced that a method employed in satirical expression to censure a specific subject or character is to amplify it beyond the conventional limits, thereby rendering it absurd and exposing its flaws.

Moreover, it can be argued that a satirical representation of societal issues is a prominent method of highlighting their shortcomings.

Upon analysing these observations in conjunction, it becomes apparent that satire functions as an artistic instrument that presents reality in a hyperbolic manner. It is important to note that this portrayal is not intended to be factual in essence, and therefore, should not be interpreted literally. (as further observed by the court in Delhi).

Beneath its facade of uncouthness, there exists a crucial element, a significant communication, if you will, that forms the essence of satire. The utilisation of hyperbole is employed to portray the subject in a manner that is deemed absurd, thereby highlighting its imperfections to the general public. The result of such discourse, albeit in the immediate period, may be restricted to expressions of joy and amusement. However, when executed effectively, it can have a tangible enduring impact by serving as a conduit for conveying veracity. From this vantage point, it seems that there is no hint of doubt in regarding satire as a novel and potentially impactful mode of communication. To restate, speech is subject to certain limitations despite its dynamic nature.

The Legal Analysis

The demarcation between the utilisation of the freedom of expression for legitimate purposes and taking undue advantage of it seems to be exceedingly delicate and occasionally imperceptible. However, it is an enduring and ubiquitous phenomenon. Trespassing this boundary would result in the violation of one's basic rights, and an instance of such infringement arises when an individual engages in the act of criminal contempt of court.

As per the analysis conducted thus far, it can be inferred that satire employs various literary devices, including but not limited to, exaggeration. It is noteworthy that the political and societal factors that are inherent in such occurrences are well-known to us. Due to the inherently unstable nature of satire, in which one frequently straddles the boundary between humour and error, and where the line of demarcation is highly subjective, an individual may inadvertently violate their freedom of expression. The inquiry that emerges is whether individuals can be subjected to the iron hand of contempt law in the current context. The forthcoming analysis will address the aforementioned question.

The Kunal Kamra Case

At present, in response to the preceding inquiry, I intend to utilise the well-known legal action of contempt of court that has been instituted against the comedian Kunal Kamra. The incident in question involves Mr Kamra's tweets directed towards the Hon'ble Supreme Court (SC), which prompted the Attorney General, KK Venugopal, to initiate Contempt proceedings against Mr Kamra. The Attorney General deemed Mr Kamra's tweets to be in "bad taste" and emphasised the importance of recognising that openly attacking the apex court carries consequences.

Subsequently, Mr. Kamra expeditiously responded to the contempt notice issued by the Supreme Court. In his response, he articulated a range of cogent, progressive, and poignant observations that underscored the paramount importance of an individual's right to free speech, particularly that of a comedian.

Although certain aspects of the individual's submission highlighted the importance of accepting jokes, another section of the text asserted that there can be no justification for the

use of humour. Even constitutional offices, including judicial offices, are not immune to being the subject of jokes.¹³

This paper refrains from conducting a thorough examination of Mr. Kamra's tweets. However, it is worth noting that Mr. Kamra's assertion that democratic institutions, particularly the judiciary, must unconditionally uphold the fundamental right of free speech in cases involving humour is, in my interpretation and from a legal standpoint, at best flawed and at worst misguided.

The case of Kunal Kamra: The Limits of Comedic Expression.

The primary objective of a comedian is to elicit laughter from their audience, and the method they employ to achieve this outcome, particularly in relation to their preferred medium, may be considered irrelevant. However, this assertion cannot be applied to speech. Satire is a contemporary form of humour that extends beyond traditional comedic tropes centred around animals and nature. Rather, it is a comical examination of societal issues and the mishaps of those in positions of power. While some individuals may opt to highlight these limitations through direct discourse, others may favour a strategy that garners wider attention and appeals to a larger demographic, such as the use of humour.

In the context of this paper, it is noteworthy that there has been a significant evolution in legal philosophy that has expanded the scope of the citizen's entitlement to critique and enhanced the social legitimacy of the judicial power, as opposed to the past. Satire is a form of expression that adopts a critical stance towards a person or organization, with the aim of highlighting their shortcomings. This attribute is widely acknowledged as a fundamental aspect of the right to free speech.¹⁴ The expression of satire and critical commentary directed towards the court may be regarded as a fundamental right of free speech. As such, these forms of expression hold equal weight and significance. This conclusion effectively addresses the initial inquiry.

The argument put forth by Mr. Kamra that jokes are entirely immune to contempt law is not a sound one and lacks persuasive certainty. The argument presented bears resemblance to the

¹³ Scroll Staff, Full text: 'Jokes not reality, don't claim to be so,' says Kunal Kamra in reply to contempt notice, Scroll, <https://scroll.in/latest/985407/full-text-jokes-not-reality-dont-claim-to-be-so-says-kunal-kamra-in-reply-to-contempt-notice>

¹⁴ D.C. Saxena v. Chief Justice of India, (1996) 5 SCC 216

assertions made by Mark Manson, an American author, who noted in a comparable context that in a democratic and liberated society, individuals are required to confront perspectives and individuals that may not align with their personal preferences. In essence, and to state it candidly, if a humorous remark causes offense, there appears to be no recourse available to address the situation.

Moreover, upon initial examination, there seems to be a flawed assumption supported by an unintentional speculation that a humorous remark, as a means of communication, and by virtue of its ability to elicit amusement, cannot be deemed offensive. This statement is inaccurate.

From a general perspective, it can be argued that all forms of speech can be categorised into two fundamental types: those that are malicious and those that are not. A speech devoid of any malicious intent, regardless of its potentially contemptuous tone or seemingly impolite written form, falls under the purview of safeguarding free speech, as stipulated in Article 19(1)(a). Speech containing elements of malice may be subject to legal restrictions under Article 19(2) of the Constitution. Failure to do so would result in the elevation of malicious speech, such as a joke, above other forms of speech, thereby granting the speaker impunity to express their malicious intent under the guise of humour. This would constitute a clear violation of Article 14 of the Constitution.

In essence, a satirical remark would exclusively pertain to the court, rather than the court's function as a justice institution.¹⁵

An In-Depth Examination of the Kunal Kamra Controversy

The law of contempt aims to balance the safeguarding of two fundamental rights, namely freedom of expression and impartial administration of justice. Therefore, it is imperative to approach and comprehend these two facets with great care.

¹⁵ This proposition is corollary to the Jurisprudence of applying contempt law only in those cases where vilification of a judge is done as a judge, and not as an individual. The rationale being, vilification of a judge as an individual cannot amount to contempt of court, as it does not obstruct the administration of justice; however, on the contrary, vilification of the judge as judge would do so. The key word here is "justice", not "judge". This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971 as confirmed by the court in *Baradakanta Mishra v. Registrar of Orissa High Court*, (1974) 1 SCC 374 (India). See also: *Krishna Iyer, J. in S. Mulgaokar, In re [S. Mulgaokar, In re, (1978) 3 SCC 339 : 1978 SCC (Cri) 402] : (SCC pp. 351-53, paras 29-30)*

On one hand, the liberal perspective on jurisprudence maintains that the dignity of a court is not influenced or weakened by insignificant remarks made by individuals. On the other hand, an opposing viewpoint disregards the aforementioned perspective and asserts that the sustainability of the judiciary as an establishment is contingent upon the persistent public perception that the judiciary is characterised by integrity and incorruptibility. In the context of India, it is believed that the populace places significant trust in the judicial system, and it is imperative that this trust is not impeded.

Examining arguments from a neutral standpoint is necessary as polarising viewpoints do not align with our objectives.

The sustainability of the judiciary as an institution ought not to rely on the presumption of its honesty and integrity, but rather, it should be grounded on the establishment of public perception through its incorruptibility. Undoubtedly, the effectiveness of a court is contingent upon its operational mechanisms. This perspective is exemplified by the commendation received by several High Courts in India from the legal community for their efforts during the COVID-19 pandemic.¹⁶

However, it is my humble opinion that the notion that the grandeur of a court is solely reliant on this single factor is a significantly erroneous belief. In certain situations, despite the delivery of just, fair, impartial, and uncorrupted justice, there may be instances where harsh responses are expressed under the guise of free speech, such as comments directed towards the court or in the form of satire. In light of the precarious situation at hand, and despite the contention of malicious speech, it is incumbent upon the court to safeguard its authority and reestablish public confidence in its ability to administer justice.

In accordance with the topic at hand, it is my assertion that when satire is executed in a sincere manner, it cannot be deemed as having a defamatory impact on the court, and as per constitutional principles, cannot be restrained. However, in the event that one attributes motive or behaves with utter disregard for their profession, where their comedic expression (or a

¹⁶ Akshita Saxena, How Various High Courts Have Been Monitoring COVID19 Issues In Their Jurisdictions?, *livelaw* (April. 23, 2021, 9:37 am), <https://www.livelaw.in/top-stories/how-various-high-courts-have-been-monitoring-covid19-issues-in-their-jurisdictions-172973>

sequence of comedic expressions) has the potential to significantly impede the administration of justice, in such extremecases.

PART THREE — Final Considerations

Despite the scope of the application of contempt law that has been discussed so far, in this section of the article I will attempt to highlight the picture that exists on the other side of the coin and elaborate on the subjectivity and mechanical application of contempt law components. I shall emphasise the necessity for a lenient approach in contempt cases as soon as I have done so.

Subjective Application of Contempt Law

According to the SC, a purposeful breach of duty, disrespect for one's obligations, and defiance of authority call for the application of the law of contempt and a corresponding punishment. [37] A good test for this type of obstruction would be to consider whether it makes it impossible or very difficult for the Judges to do their duties. If not, it is not considered to be contempt of court. The subjectivity of this strategy, however, is a concern.

There has been much discussion regarding the courts' ability to penalise for contempt, which, as courts of record, they draw from the constitutional requirements rather than from The Contempt of Courts Act, 1971 [Act] itself.

As a result, having such a potent innate power that may be applied in a variety of subjective ways necessitates careful planning and execution. It should be observed at this point that the analysis done thus far gives the appearance that contempt law has a mechanistic application, i.e., that the decision is based on objective factors like speech that is malicious or not. However, since this is not the case, a satirical allusion could be made on either end of the argument. The jurisprudence of lenient application of contempt law steps in to help us here.

The Jurisprudence of Lenient Application

The increase of contempt cases is clearly upsetting the judiciary. Judges have been encouraged to wield this authority carefully and not to be overly sensitive, even when falsehoods and critiques go too far. Subjective application has made the situation worse, and the type of speech being discussed—satire and jokes—means that it will only become worse. Therefore, even

though there will never be an objective criterion by which we can judge whether a speech is contemptuous or not, there are some things that could be taken into consideration.

The SC has recommended taking into account a few factors, including the individual making the comment and the desired goal that is being pursued, in order to determine criminal contempt. In light of the aforementioned criteria, I contend that, while a comedian may not be entitled to any special treatment because of their profession—which, incidentally, allows them to criticise a subject in order to elicit laughter—this factor shouldn't be outright disregarded either.

For instance, the SC did take into account the distinguished lawyer Prashant Bhusan's standing as a prominent legal eminence when considering his contempt case.¹⁷ Additionally, as stated earlier, satire's intended function is to highlight the system's drawbacks. This is not to say that satire won't occasionally cross this line, but these two issues must be carefully considered, and the iron hand of the contempt law should only be used against the violator—as noted by the SC—when there is a significant lapse in the strict standards of rectitude in the administration of justice.

CONCLUDING REMARKS

From the investigation we have done thus far, we have seen that, despite any hint of malice, remarks against the court and satirical references made against the court are two species that share an equal pedestal and belong to the same genus, i.e., freedom of speech and expression; as a result, satirical references can also be considered acts of contempt of court.

Further, it is acknowledged and reaffirmed that comedic satire does not enjoy a special pier on the platform of fundamental rights and that it could be effectively curtailed, if necessary (thus refuting Mr. Kamra's arguments); however, I argue that such restraint should only be used when someone's remarks or actions seriously impede the administration of justice to the point where the judiciary sees no room for exemption.

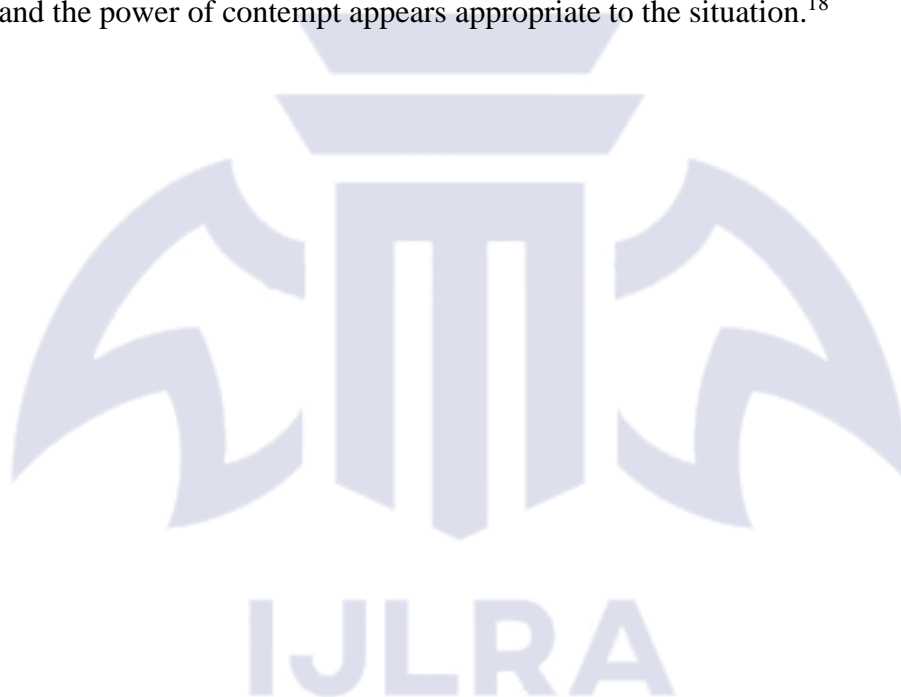
Further, it's important to reiterate here that the application of contempt law is accompanied by a highly subjective scale and can serve as a significant inducement (or deterrent) in the areas of free speech because, in contempt cases, the court is both the accuser and the judge of the accusation.

¹⁷ Prashant Bhusan, In Re (Contempt Matter), (2021) 3 SCC 223

As a result, the application (and the resulting limits) of criminal contempt essentially come down to the perception and subjective application of contempt law.

Last but not least, the ability to punish for contempt of court has been demonstrated to be a reliable safety valve for judges to carry out their duties. As a result, the scope of contempt law should only be tested in cases where the contempt has committed a serious offence while purportedly exercising their right to free speech; even in those instances, the judiciary must necessarily either ignore the satirical reference or consider it in light of the constitution.

Perhaps Justice Markandey Katju's statement that the rights of citizens can only be viewed as primary and powers like contempt as secondary in the interaction between freedom of expression and the power of contempt appears appropriate to the situation.¹⁸



¹⁸ Mr. Justice Markandey Katju, Contempt of Court: The Need for A Fresh Look, 1 LW (JS) 1 (2007)