



Contempt of Court - Bar on Freedom of Speech or Necessary Evil?

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ABSTARCT

The disposition of the Judiciary in neoteric times seem to be intolerant to criticism. The power of the courts to punish those who disobey the courts are well established and clear. Any attempt to disrespect or violate legal authority and management is considered contempt of court. However, it is unclear to what extent such punitive powers can be used within reassuringly safe boundaries to protect an individual's right to privacy. The court found it essential to "build public respect and trust in the judicial process" to justify its use of the power of contempt. Recurrent instances of invoking the contempt jurisdiction to stifle freedom of speech has opened floodgates of questions that the courts are muzzling down free speech in the name of 'Scandalizing the Court'. The first section of the paper is a comprehensive analysis on the evolution of Contempt of Courts Act in India and propels light on whether the criminal contempt provision under the Contempt of Courts Act, 1971 shreds freedom of speech enumerated under the constitution. In this context, we have made a modest attempt to investigate the origins of this judicial power, which has been the subject of much scholarly discussion. The article also discusses the contentious issues surrounding recent cases in which the authority and integrity of the country's Supreme Court have been called into question and how these issues have been resolved. With an in-depth description of the issues concerning the Contempt Jurisdiction of the High Court and the Supreme Court, the paper concludes that the Criminal Contempt provision under the Contempt of Courts Act, 1971 erodes free speech enunciated under the Constitution.

Keywords: Contempt of Courts Act, 1971, Criminal Contempt, Civil Contempt, Constitution, Supreme court.

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Introduction

“Let me say this at once that we will never use this Jurisdiction to uphold our own dignity. We do not fear criticism, nor do we resent it for there is some far more important at stake and it is no less than freedom of speech itself all that we ask is those who criticize us should remember that from the nature of our duties we cannot reply to their criticisms, we cannot enter into public controversies and we must rely on our conduct itself to be its own vindication. Sometimes an upright Judge is unjustifiably criticized the best course of action for such a Judge is to ignore baseless criticisms but pay heed to honest and correct criticisms”

-Lord Denning

Contempt of Court as a theory protects the Judiciary from unwarranted criticism and motivated attacks. The Concept of Contempt of Court has its genesis in England. It is a common law principle that seeks to protect the judicial power of the king, initially exercised by himself, and later by a panel of judges who acted in his name¹¹⁷. It is basically derived on the idea that “King can do no wrong”.

Rule of law forms has been identified from time to time as one of the important features, that it also forms the basic structure of the Indian Constitution. Right to obtain judicial timely relief thus, also becomes an important aspect of the same. The Courts thus have the onus to look into administration of justice and must be also duly empowered to take cognizance and remedy any conduct which affects such process, misconduct or any act which brings disrepute to courts. The courts at same time must judiciously use the same to preserve the honor and dignity of the judicial system and the same must not be seen as weapon of retribution in public domain.¹¹⁸

The First Contempt of Courts Act in India was introduced in the year 1926 and it was enforced only in the presidency towns which is now called as the metropolitan cities (Madras, Calcutta, and Bombay) which had courts of record now replaced as the High Court. The Parliament drafted the Contempt of Courts Act and it entered the Gazette in the year 1971. In the year 2006, Section 13 was amended, and it is now a settled position of law that truth is a valid defense for contempt. Punishment is prescribed under section 12 of the Act which prescribes six months of simple imprisonment or rupees thousand fine or both.

Justice Krishna Iyer has quoted that the “The law of Contempt has a vague and wandering

¹¹⁷ <https://www.thehindu.com/news/national/the-hindu-explains-what-is-contempt-of-court/article32249810.ece>

¹¹⁸ Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors., (1999) 7 SCC 569

Jurisdiction with uncertain boundaries, such a law regardless of public good may unwittingly trample on civil liberties”. It is asserted that the word “Contempt” is not clearly defined not only under the constitution but also under the Contempt of Courts Act 1971. The source for contempt law is in Article 129, Article 215, and Article 142(2) of the Constitution.

The Constitution gives powers to the Supreme Court and the High Courts to punish for contempt, Article 129 speaks about the Supreme Court’s power to punish for contempt, Article 142(2) gives the power to Supreme Court to investigate the matter pertaining to contempt and Article 215 gives powers to the High court to investigate and punish for Contempt.

The Constitutional Courts can take up the issue of Contempt on a petition from the Advocate General (High Court), Attorney General (Supreme Court) or any person can make an application for contempt proceedings subject to the approval of the Advocate General and Attorney General.

The contempt of courts act basically divides contempt into a Civil Contempt and Criminal Contempt.

Civil Contempt

Civil Contempt under Section 2(b) means wilful disobedience to any Judgment, Decree, Direction, and Order, Writ or other process of a court or wilful breach of an undertaking given to a court.

Civil Contempt to put it simply that every Judgment is ought to be followed and a disobedience of any judgement calls for contempt action. There is no muddle with Civil contempt that in a civilized society, it is needed as rightly pointed by Justice P.B.Sawant that “We are governed by the rule of law, Judgments must be followed and if Judgements are not followed the authority of court goes away and we will turn into a lawless society.

In Ashok paper khamgar Union V Dharam¹¹⁹ the court expounded into the aspect of willful disobedience were in the Supreme Court ruled that it is an act done voluntarily, intentionally with a specific intent to do something which the law forbids. In Supreme Court Bar Association

¹¹⁹ (2003) 11 SCC 1

v Union of India¹²⁰ the apex court while examining the power of contempt remarked that no Act of parliament can take away the inherent jurisdiction of the court of record to punish for contempt. In T.Sudhakar prasad v Govt of Andhra Pradesh¹²¹ the court asserted that the provisions of the contempt of court act are in addition and not in derogation of Article 129 and Article 215 of the constitution and the court affirmed that no provision under the act can limit or regulate the exercise of Jurisdiction contemplated by the said articles.

Scandalizing free Speech

Criminal Contempt under Section 2(c) delves on three Sub Categories:

- 1) Publication written or Oral
- 2) Scandalizing or lowering the authority of the court
- 3) Interfering with the due course of Judicial Proceedings or Obstructing with the administration of Justice.

A criminal contempt has a very wide connotation and is defined under the Act as “An Act which scandalizes or tends to scandalizes or lowers the authority of any court, prejudices or interferes or tends to interfere with the due course of any Judicial proceedings or interferes or tends to interfere or obstruct with the administration of Justice in any manner. The above-mentioned words for criminal contempt are so vague and wide that different Judges have interpreted these words in different ways. It is surprising to see that we have adopted the colonial mind setup that in the Contempt of Courts Act, 1971 ‘Truth’ was not initially recognized as a valid defense only in the Contempt of Courts (Amendment) Act, 2006 truth was recognized as a valid defense.

But in a vibrant democracy like India where freedom of speech has been guaranteed under the constitution, it is pertinent to strike a balance between contempt and freedom of speech.

It is agreeable that in day-to-day discourses and communications there has to be certain limitations to free speech. But it should not be permanently muzzled down in the name of scandalizing the court.

¹²⁰ Supreme Court Bar Association vs Union Of India & Anr on 17 April, 1998

¹²¹ T. Sudhakar Prasad vs Govt. Of A.P. & Ors on 13 December, 2000

In *P.N.Duda v V.P.Shivshankar*¹²² the Apex Court held that mere criticism of the Court order doesn't amount to contempt as long it doesn't hamper the administration of Justice. Within four years in *Pritam Lal v High court of Madhya Pradesh*¹²³ the Supreme Court reversed its position that in order to preserve the court from interference it becomes the duty of the court to punish the contemnor to preserve its dignity.

In Justice Karnan's case¹²⁴ when he expressed no remorse for levelling baseless allegations against the Judges of the supreme court he became the first sitting judge to be imprisoned for contempt. It is ironic that Mr.Prashant Bhushan tweeted in the year 2017 that he was glad that the supreme court incarcerated Justice Karnan for scandalizing the court without any evidence, The same Mr.Bhushan went on to blow hot and cold air at the same time by casting aspersions that half of the last sixteen Chief Justices were brazenly corrupt in an interview to the *Tehelka Magazine* in the year 2009.

Freedom of speech and expression is the corner stone of any living democracy including fair and reasonable criticism of working of court. The statements made must be fair, truthful and must be made on account of public good.¹²⁵ It is a settled position of law that freedom of speech and expression is not absolute and subjected to reasonable restrictions under Article 19(2) of the constitution. It is also argued that Contempt is not part of the colonial continuity and Contempt of court has been incorporated under 'Reasonable restrictions' enumerated under Article 19(2) by our constitutional framers. In cases one embarks and takes the path Constructive criticism of the functioning of the Judiciary, the onus lies on person making the statement to ensure that it is correct, rather than making sweeping statements under the garb of freedom of speech and expression.

Arundhati Roy's case¹²⁶ is a classic example when the author expressed no penitence for writing a vituperative article against the Narmada Bachao Andolan Judgment. On a day-to-day basis the image of the court is lowered through 'Media Trials'. The Chief Justice of India is a 'Pater Familias' of the Institution, therefore any imputations made against the Chief Justice of India is also an imputation made against the institution.

¹²² *P.N.Duda vs V.P.Shiv Shankar & Others* on 15 April, 1988(Page 1208)

¹²³ *Pritam Pal vs High Court Of Madhya pradesh* on 19 February, 1992

¹²⁴ *Justice C.S. Karnan vs The Honourable Supreme Court of India* on 23 August, 2017(Page 703)

¹²⁵ *Ibid.*

¹²⁶ AIR 2002 SC 1375

There was an event when a member of the bar made certain scathing comments against the registry that the cases are not allotted properly and there are a lot of discrepancies in the matter of listing of cases. The Supreme Court took cognizance of this issue and asserted that imputation against the registry is an imputation against the Chief Justice of India and barred him from practice for one month but contempt proceedings were dropped.¹²⁷

Justice Hidayatullah confined the limits of contempt by stating that criminal contempt should not be invoked unless the statement made is “Manifest, Mischievous or Substantial” so the use of this contempt power should be spare, rare and exercised with restraint. The Judiciary should keep in mind the lucid words of Justice Krishna Iyer that for the Judiciary to overcome criticism the best defense available is good performance.

The supreme court showed magnanimity in Prashant Bhushan’s case¹²⁸ considering the fact that he is a senior member of the bar, It is doubtful whether the same level of benevolence will be shown to standup comedian Kunal kamra¹²⁹ who was recently granted consent to be prosecuted for criminal contempt by the Attorney General of India Shri K.K.Venugopal for his tweets against the supreme court for granting bail to Republic Tv Editor-in-chief Mr. Arnab Goswami.

What does not amount to contempt?

The courts have always held that there must be balance maintained between genuine criticism and abusive and scandalous speech. The right to exercise one’s freedom to speak must be within bounds of reasonability not amounting to inciting public or insulting the stature of court.¹³⁰ In addition to that when court orders are not adhered to due to genuine mistake or due lack of understanding in true application of the order, the said situation does not call for application of contempt charge.¹³¹

¹²⁷ <https://www.scconline.com/blog/post/2017/08/17/advocate-mohit-chaudhary-barred-from-practicing-for-1-month-for-levelling-false-accusations-on-sc-registry-contempt-charges-dropped/>

¹²⁸ In Re Prashant Bhushan, 14 August, 2020

¹²⁹ <https://www.thehindu.com/news/national/ag-gives-consent-for-criminal-contempt-action-against-kunal-kamra/article33084550.ece>

¹³⁰ In M.V. Jayarajan v. High Court of Kerala & Anr (2015) 4 SCC 81

¹³¹ In B.K. Kar v. Hon'ble the Chief Justice and his companion Justices of the Orissa High Court & Anr, AIR 1961 SC 1367

Further in cases where there is prima facie opinion that the judgement or order of the court could be interpreted in more than one way. If the contemnor has acted in way other than the one which was viewpoint of the court without any intention of willful disobedience, the same shall not amount to contempt of court but for genuine mistake.¹³²

Additionally, court have been vocal on numerous occasions to be clear that mere noncompliance, technical contempt differs from the intentional act of the person to interfere with process of administration of justice and lower the stature of the court. There are multiple cases and situations which may exhibit certain shades of contempt but fall short of that would be needed to invoke the stringent provisions of contempt.¹³³

Position in other Countries

England and Wales

As per the English legal system, the offence of contempt is governed by Contempt of Court, Act 1981, which covers both civil and criminal contempt within its ambit. It provides for an imprisonment of two years for the guilty contemnor. Section 1 of the above-mentioned act applies the principle of strict liability thereby any act of the person which amounts to interference with process of justice irrespective of contemnor intent.¹³⁴

The Law Commission of United Kingdom had published a detailed report in 2012 on contempt, wherein it specifically recommended omitting and abolishing the offence of scandalizing the court in relation to criminal contempt. It was noted by the commission that the idea behind the powers of contempt was on the same line with seditious libel to moderate and control what was being said about the state machinery and judges in turn. Further there was less than three prosecutions that also prior to 1931. In addition to that the commission also noted there were sufficient provisions under Public Order Act 1986 and Communication Act 2003. Thus, an amendment to Crime and Court Bill, was introduced in 2013 which abolished the offence in line with recommendations of 2012 report.¹³⁵

¹³² *Mrityunjoy Das & Anr. v. Sayed Hasibur Rahaman & Ors.*, AIR 2001 SC 1293

¹³³ *Murray & Co. v. Ashok Kr. Newatia*, AIR 2000 SC 833

¹³⁴ Contempt of Court, Act 1981 available at <https://www.legislation.gov.uk/ukpga/1981/49>

¹³⁵ The Law Commission (Law Comm No. 335) “Contempt of Court: Scandalising the Court”, (2012) available at <https://www.lawcom.gov.uk/project/contempt-of-court-scandalising-the-court/>

Pakistan

The law regarding contempt is governed by the Contempt of Court ordinance 2003. The contempt of court act 1976 stood repealed by the Contempt of Court Ordinance, 2003 which was further repealed by Contempt of Court Act 2012 until it was quashed by Supreme Court of Pakistan. Further the powers to punish for contempt are derived from Article 204 read with federal list entry 55 of Constitution of Islamic Republic of Pakistan provides contempt powers to Supreme Court of Pakistan in realm of contempt of court or acts affecting the dignity of court or the judge.

The Contempt of Court Act 2012 was passed with major exception being given public office holders such as prime ministers and other ministers. Further the wordings scandalising the court was replaced with the term scandalising a judge. This was unequivocally declared unconstitutional and void by court in case thereby negating the amendments to bring all persons under the ambit of law, with no exceptions.¹³⁶

United States of America

The law in United States also recognizes both civil and criminal contempt. It states that where the party refuses to adhere to a mandate in civil case will lead to civil contempt which may be cured by adhering to the order or sentencing. The criminal contempt is one where the contemnor has already committed an act which has harmed the stature of court and must be punished to restore the dignity of court. The Judiciary Act of 1789 provided the courts with power to punish for the contempt with fine or imprisonment. The wide ambit of the power was curtailed with passage the Judiciary Act of 1813 to certain extent. The courts in United States of America also have balanced the first amendment right of free speech with that of contempt law. The courts have held that the power of contempt will be subject to guarantees under the first amendment provided to press and individuals.¹³⁷

Conclusion

The Contempt of Courts Act, 1971 and relevant contempt redressal provisions under constitution gives rise to debate seeking clarity to what institutional dignity it tends to protect

¹³⁶ Baz Muhammed Kakar & Anr. v. Federation of Pakistan

¹³⁷ Bridges vs California

and what is the defined limit of the same. There is always discussion and suggestion from all quarters to exercise restraint while dealing with contempt cases. The wide ambit of terms scandalizes the court or prejudices judicial proceedings under the Contempt of Courts Act, 1971, certain trial and convictions always raise concern about need and utility of above provisions. It may give rise to more cases where the provisions seeking to safeguard administration of justice itself may succumb to comfort of individual judge's interpretation, further violating the basic principle of 'one shall not be judge in its own cause'.

The law in present form and its use will give rise to more conflict situations. The use contempt powers shall not be used to blanket criticism but must be used in rare occasion wherein it becomes impossible to remedy situation without invoking contempt powers. In all States around the pillars of democracy are always pounded with significant criticism which is different from monarchy or autocracy where the curtains are drawn on free speech and opinion. In republic of India courts have played a major role as guardian of free speech and the same is like to bring out tremendous rise in contempt related cases, until a refined approach is undertaken by the judiciary overall.
