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Contempt of Court v Freedom of Speech & Expression

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Freedom of speech is a fundamental human right that encompasses the liberty to express one's thoughts, opinions, and ideas without fear of censorship or retaliation. This right plays a crucial role in fostering democratic societies, allowing individuals to participate in open dialogue, share diverse perspectives, and contribute to the marketplace of ideas. The importance of freedom of speech lies in its ability to nurture intellectual growth, promote societal progress, and hold those in power accountable. However, this cherished freedom also presents challenges, as the line between free expression and harmful speech can be blurry. For a democracy to work, certain elements need to be followed, at times, these elements may contradict or challenge each other but it is upon the citizens, the lawmakers, and the defenders of the law to look into this matter and find an amicable solution. Freedom of Speech and Expression is one of the most crucial constituents of democracy. However, instances of hate speech, misinformation, and incitement to violence test the limits of the right of Freedom of Speech, prompting societies to grapple with the delicate balance between protecting free speech and mitigating potential harm to individuals or communities. Striking this balance is an ongoing challenge in the complex landscape of modern communication.

Keywords: *contempt of court, criticism, fundamental rights, democracy.*

INTRODUCTION

For any democracy to flourish and grow, constructive criticism is necessary and should be encouraged. However, at times this criticism takes the shape of disrespect and humiliation, instances of which reflect a need for a line to be drawn. The constitution makers have given power to the Courts to punish a person who indulges in an act where criticism lowers the authority of a judge or even acts as a barrier to the administration of Justice. This power was given the form of a legislation called, the Contempt of Court Act 1971¹. Ironically, Section 5² does not bring fair criticism under the purview of Contempt. Still, the issue arises when we see that this act gives the court, against whom the remark has been made, the power to decide whether a certain act comes under constructive criticism or not. Some might think of it as dictatorial legislation where the victim is the jury to its case.

In this context, the delicate interplay between freedom of speech and the Contempt of Court Act 1971 emerges as a focal point, where the right to express opinions collides with the necessity to safeguard the integrity of the judiciary. Focusing on which this article delves into the nuances of this struggle, navigating the historical evolution of contempt laws in India with a reference to cases of 'Contempt of Court' over the years in India along with a recent case of Prashant Bhushan. As we scrutinize the contours of this legal landscape, we will grapple with the imperative to balance preserving democratic freedoms and upholding the sanctity of the justice system.

CONTEMPT OF COURT ACT 1971

The Contempt of Court Act 1971 is a six-page legislation consisting of 23 sections that define what contempt is, what all things constitute to commit contempt, the types of contempt, what all acts are not considered as contempt, the power of the courts about contempt, the punishment

¹ Contempt of Court Act 1971

² Contempt of Court Act 1971, s 5

for contempt, the procedure established by law for proceedings in contempt, the procedure after cognizance and the limitations of this act etc.³

Section 2(a)⁴ divided contempt of court into two parts: Civil and Criminal. Lord Diplock framed the definition of Contempt of Court in the landmark judgment of *Attorney General v Times Newspaper Ltd*⁵ as the conduct relating to any particular proceeding that may undermine the system or restrain a citizen from settling their disputes in the court of law. Contempt can in simpler words be described as disobedience towards the court of law. Contempt has also been talked about in Article 129 and Article 142(2) of the Indian Constitution. Article 129 states that the Supreme is a Court of Record and has the power to punish for contempt itself.⁶ Article 142(2) states that the courts have the power to punish anyone for Contempt.⁷

ARTICLE 19(1)(A): FREEDOM OF SPEECH & EXPRESSION

The Indian Constitution under Part III promises every citizen certain rights that can never be infringed. Specifically talking about Article 19 we find 6 fundamental freedoms promised to every citizen. Article 19(1)⁸ specifically talks about the protection of rights regarding Freedom of Speech. Article 19(1)(a) guarantees every citizen the Right to Freedom of Speech and expression. It is believed that a Democracy can only sustain when its citizens have the authority to openly criticize, and the right to speak whatever they wish. Article 19(1)(a) guarantees that the Indian ethos of Democracy is upheld and every citizen is given the right to speak their heart out.

Speech and Expression have a broad meaning, it cannot be read in a constrained manner, it means giving the person the right to express his ideas, and opinions without any bounds through any medium he wishes, be it written, print, pictorial, gestural, or spoken. It also includes the expression of ideas through visible representations or any other communicable means.

³ Contempt of Court Act 1971

⁴ Contempt of Court Act 1971, s 2(a)

⁵ *Attorney General v Times Newspaper Ltd.* [1973] 3 WLR 298

⁶ Constitution of India 1950, art 129

⁷ Constitution of India 1950, art 142(2)

⁸ Constitution of India 1950, art 19(1)

PRASHANT BHUSHAN CASE ON CONTEMPT

On June 29, 2020, the civil rights lawyer in the Supreme Court of India, Mr. Prashant Bhushan tweeted a picture of the then Chief Justice of India, S.A. Bobde with a caption saying, '*CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan without a mask or helmet at a time when he keeps the SC in lockdown mode denying citizens their right to access justice.*'

This tweet was considered a serious case of Contempt and an attempt to taint the dignity of the Apex Court of India. A three-judge bench consisting of Justices Mishra, Gvai, and Murari. The court held Mr. Bhushan guilty of contempt of court on 14th August 2020 and ordered the lawyer to pay a fine of Rs. 1.

Post this judgment, the country saw an uproar from supporters of Mr. Bhushan, most of them being retired Justices, lawyers, politicians, and civil societies. All of them criticized the judgment by the Hon'ble Supreme Court. This judgment was seen as an attempt to squash the dissent.

ORIGIN OF CONTEMPT OF COURT ACT

As old as this world is, the role of the judiciary and the justice system is also present from the very beginning. The current legal system that we see is the genesis of a long journey that originated in the form of natural justice. From the times of great rulers in the ancient age and the medieval age, we see that with the presence of the Justice system there prevailed a sense of respect, dignity, and authority of the monarch who was the epitome of justice at that time. The Monarch was the head of the judicial system and any kind of disrespect or non-compliance of orders was considered or can be said as an insult to the King and was not tolerated. It can be inferred from Kautilya's book, Arthshastra that any act that may seem questioning a monarch's justice was considered as an act of treason. Kautilya quotes, "*Any person who exposes the king or insults his council or any bad attempt on the king, his tongue should be ripped out.*"

Later in the medieval age, when the power was shifted to the judiciary, although the power was handed over to the judges, the source of law remained the same and any disrespect was not tolerated. The first ever registered case of Contempt of Court was observed in 1765, against J.

Almon⁹. The judge, Sir Wilmont stated that unbiasedness is one such of the justice system that separates it from the other institutions. Any question of bias against the judiciary is considered an insult to the institution.

HISTORY AND EVOLUTION OF CONTEMPT LAWS IN INDIA

The Indian Contempt law has been brought in through the English Laws and Statutes. The first ever Contempt provisions were found in the States of Rajasthan and Saurashtra, named, Contempt of Court Act, 1926, until then there were no specific provisions for Contempt for Indian as a whole, until the year 1952, when the first act was enacted. The Contempt of Court Act, of 1952, gave the High courts the power to punish its subordinate courts. This act repealed the older 1926 act and took the whole country in its ambit except the state of J&K.

The dispute with the 1952 act was that it was arbitrary and did not define the word Contempt leaving a lot of ambiguity about what is to be termed as Contempt. The main concern was the two fundamental rights that were being infringed, the Right to Speech and Expression and the Right to Personal Liberty. In the year 1960, B. B. Das Gupta introduced a bill in the Lok Sabha to amend the existing legislation and strengthen the contempt power in the country.

The Government after looking closely at the matter, set up a special committee, headed by H.N. Sanyal in the year 1961.¹⁰ The Sanyal Committee inspected the act, concluded in February 1963, and stated that contempt should be given a proper definition and should be divided into two subdivisions, Civil Contempt and Criminal Contempt. The Committee further specified that High Courts and the Supreme Court have the inherent power to punish for contempt. Later in the year, 1971, the latest was amended on the following suggestions.

⁹ *King v Almon* [1765] 97 ER 94

¹⁰ Amanat Raza, 'Contempt of Court' (*iPleaders*, 20 August 2019) <<https://blog.iplayers.in/contempt-of-court-2/>> assessed 18 November 2023

ESSENTIALS FOR CONTEMPT

While holding someone responsible for a certain act, the criteria for such an act should be fulfilled only then the person can be held liable. The main essentials for a Contempt are as follows:

1. The party should willfully do any disobedience or non-compliance to any order or decree of the court.
2. For any case of criminal contempt, there should be an open representation or publication either spoken or written, of disagreement with the court.
3. The party must have knowledge of the act or order that he disobeys. The action should be deliberate and in disregard to the court orders.

CIVIL & CRIMINAL CONTEMPT

A Civil Contempt is defined under Section 2(a) of the act as willful disobedience to order, or decree by any willful breach of undertaking by any party. In short, civil Contempt is when a party is deprived of the benefits from the court that they rightfully should have received. In the case of *Utpal Kumar Das v Court of Munsiff, Kamrup*¹¹ the court held that a person had the knowledge of the order and due to willful disobedience obstructed to follow the order to render assistance.

Another case where civil contempt is registered is when there is a breach of undertaking. In the case of *U.P. Resi. Emp. Co-op., House B. Society v New Okhla Industrial Development*¹² Authority. The court ordered the residents to issue an affidavit where Mr. S issued a false affidavit that misled the Court; this was regarded as civil contempt.

¹¹ *Utpal Kumar Das v Court of Munsiff, Kamrup* AIR 2008 Gau 62:

¹² *U.P. Resi. Emp. Co-op., House B. Society v New Okhla Industrial Development Authority* AIR 2003 SC 2723

A Criminal Contempt is defined under Section 2(c)¹³ of the act. It has been divided into 2 parts: (i) publication of matter, it can be spoken, written, or in gestures, and (ii) doing an act that involves any of the following criteria:

- a. Scandalize or tend to scandalize, lower or tend to lower the authority of any court, or
- b. Biasness interferes or tends to interfere with the due course of any judicial proceedings,
or
- c. Obstructs or tends to obstruct, interfere, or tend to interfere with the administration of justice in any manner.

A landmark case in this regard was that of *Jaswant Singh v Virendra Singh*¹⁴, where the counsel in this case made a disparaging and scandalous assault on a High Court judge. An election petitioner, who is also a lawyer, filed an application before the High Court. He sought to wait for more arguments in an election petition, as well as the transfer of election petitions. These events posed a threat to the High Court's judicial process and had the potential to embarrass the Court.

INFRINGEMENT OF FREEDOM OF SPEECH & EXPRESSION WITH RESPECT TO THE PRASHANT BHUSHAN CASE

A three-judge Supreme Court bench issued a call to arms on July 22, declaring two Tweets by famous attorney and activist Prashant Bhushan to be prima facie disrespectful. On August 14, the bench found Bhushan guilty of uttering 'scandalous' and 'scurrilous' remarks on the Supreme Court's institution. According to the court, Bhushan's remarks did not amount to fair criticism of judicial. Even though the Supreme Court was closed for routine physical hearings and an incomparable number of cases were handled via video conferencing, the bench found that Bhushan's first tweet was 'patently false' and had 'the tendency to shake the public's confidence in the institution of the judiciary'.

¹³ Contempt of Court Act 1971, s 2 (c)

¹⁴ *Jaswant Singh v Virendra Singh* (1993) NCE 5332

The Fundamental Right to freedom of speech and expression guarantees that the citizens can openly put forward their viewpoints. It entails disseminating one's viewpoints through speech, writing, audiovisual instruments, ads and any other means of communication. It also includes rights to knowledge and freedom of the press, among other things. As a result, this basic right has a broad application. The current Judgement in the Prashant Bhushan case seems to infringe this fundamental right.

According to section 13¹⁵, a court cannot punish for contempt unless it is 'satisfied' that there has been an obstruction to the administration of justice, the person charged with contempt 'justifies' his actions with truth as a valid defense, and the court is 'satisfied' that such ground has been invoked in the public interest and in a bona fide manner. In the Prashant Bhushan case, there has been no obstruction of justice or any matter in which there has been an act against the public interest.

CRITICAL ANALYSIS

In the case of *Regina v Secretary of State for the Home Department*¹⁶, J. Holmes remarked that the right to free speech and expression is the lifeblood of democracy and that it includes the freedom to fairly criticize the work of the court in private or public.

As stated in the case of *M/S. Chetak Construction v Om Prakash*¹⁷, contempt legislation in the year 1971 was passed with the intention to satisfy two fundamental values: the freedom of free expression and the right to independent justices. When the judiciary itself has the power to decide a case based on its satisfaction and justification to penalize someone for contempt, it demonstrates prejudice.

In Prashant Bhushan's case and in many others, the court failed to use a procedural criterion when sentencing someone for contempt, which is necessary when freedom of speech and expression is fairly restrained under Article 19(2)¹⁸ of the Constitution. The European Court of

¹⁵ Contempt of Court Act 1971, s 13

¹⁶ *Regina v Secretary of State for the Home Department* [2002] UKHL 36

¹⁷ *M/S. Chetak Construction v Om Prakash* AIR 2003 MP 145

¹⁸ Constitution of India 1950, art 19(2)

Human Rights (ECHR) developed a three-prong test for justifying a restriction on freedom of expression in the case of *The Sunday Times v United Kingdom*¹⁹.

As per the law, it must impose prong tests, the restriction. The court failed to determine whether the tweets impeded the administration of justice in a significant way, as required under Article 142(2)²⁰ of the Constitution. Furthermore, the court fails to meet Section 13(a)²¹ criteria and fails to explain why Mr. Bhushan has not been presented with the defenses of 'truth' provided under Section 13(b)²².

As stated in the case of *C.K. Daphtary v O.P. Gupta*²³, a basic reading of section 13(a) and (b) demonstrates that the legislation places a responsibility on the court to examine the circumstance itself as to the factum of any interference with the course of justice or due process of law.

CONCLUSION

The intricate interplay between freedom of speech and contempt of court unveils a delicate balance essential for a thriving democracy. However, the contours of this freedom become blurred when confronted with acts of contempt that challenge the authority of the judiciary. The Contempt of Court Act 1971, while seeking to preserve the dignity of the judicial system, introduces complexities; the historical evolution of contempt laws in India reveals a trajectory influenced by English statutes and the quest for a balanced legal framework. From the origins of natural justice to the present-day legal landscape, the evolution of contempt laws mirrors societal shifts and the changing dynamics of authority. The Act's reliance on the judiciary to determine the nature of criticism raises questions about objectivity and potential misuse of power. It is critical to recognize that there is a narrow line between the terms 'court' and 'judges'

¹⁹ *The Sunday Times v United Kingdom* [1979] ECHR 1

²⁰ Constitution of India 1950, art 142(2)

²¹ Contempt of Court Act 1971, s 13(a)

²² Contempt of Court Act 1971, s 13(b)

²³ *C.K. Daphtary v O P Gupta* (1971) AIR 1132

and that interpreters of the law frequently employ the weapon of contempt to defend their dignity rather than that of the courts.

In the same way, there is a narrow line between criticism and contempt. The fundamental right to freedom of speech and expression, enshrined in Article 19(1)(a) of the Indian Constitution²⁴, is paramount for a vibrant democracy and the above-discussed cases raise concerns about potential infringements on this right.

However, there is a need for a procedural criterion in contempt of Court proceedings. While the judiciary holds the responsibility to maintain its dignity, it must navigate the fine line between safeguarding its honor and respecting citizens' right to criticize. The failure to apply a comprehensive test, akin to the three-prong test established by the European Court of Human Rights, leaves room for ambiguity and potential overreach. As democracy evolves, so must the legal frameworks governing the delicate dance between freedom of expression and the constraints required for a functional judiciary. In the quest for justice, democracy thrives when both citizens and the judiciary engage in a constructive dialogue that respects rights and responsibilities. It can be concluded from this article that, although it is necessary to uphold the dignity and respect of the Justice system any act of disobedience must not be tolerated, but free speech should not be restricted in the process. Therefore, the power to penalize for contempt of court must be used carefully, prudently, and discreetly at all times. An impartial panel should be established to oversee the misuse of the contempt of court power.

²⁴ Constitution of India 1950, art 19(1)(a)