

CONTEMPT OF CONSCIENCE

Arnab Paul* Pratyush Saxena*

ABSTRACT

This article explores the Indian laws which restrict freedom of speech and expression and tries to provide some pragmatic alternatives to these archaic and draconian laws. The advantages and disadvantages of these laws are also highlighted. The object of the study is to examine these laws and their impact on Indian society. It aims to critically analyze the legal jurisprudence developed on these issues. The freedom to criticize and protest is part of a broader right to freedom of expression, seen as fundamental to the functioning of a democracy. If the citizens of a country are not free to express themselves, their civil and other political rights are also at stake and hence in this article, these issues are specifically looked upon.

INTRODUCTION

Mahatma Gandhi once said, “I want freedom for the full expression of my personality”. The limitation of freedom of expression of a person should be limited only by his personality, not by draconian laws. In this article, we will discuss the criminal laws regarding Contempt of Court and how it is being misused to curb freedom of speech and expression guaranteed under the Constitution of India¹. William John Kenneth Diplock, Baron Diplock, PC (8 December 1907 – 14 October 1985) was a British barrister and judge, who in his judgment in the case of *Attorney-General v. Times*² said, that “the term ‘Contempt of Court’ is a generic term descriptive of conduct about particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes.” When we disregard or demonstrate defiance toward a court of law, we are willfully disobeying the court's order or demonstrating disrespect for the judicial authorities. If the defendant is found guilty of contempt, the court then has the authority to impose punishments like fines or perhaps even confine the offender in jail for a specified amount of time.³

*BA LLB, FOURTH YEAR, JSS LAW COLLEGE, MYSORE.

*BA LLB, FOURTH YEAR, JSS LAW COLLEGE, MYSORE.

¹ The Constitution of India 1950, a 19(1)(a)

² *Attorney-General v. Times Newspapers Ltd* [1973] 3 W.L.R. 298

³ Amanat Raza, 'Contempt of Court leaders, 20 August 2019' <<https://blog.ipleaders.in/contempt-of-court-2/>> accessed 25 July 2022

HISTORY OF CONTEMPT LAW IN INDIA

The H.N Sanyal-headed Commission reported a discussion of the development of India's current contempt statute. It was up to this committee to start the process of changing the law. The law of contempt is related to many other laws that have been inspired by English statutes and legal precedent, but it also has other sources. What was the evolution of the Aboriginal contempt law? This is explicable in light of the secular system that our nation previously had to defend before courts or assembly (sabhas). We are aware that the philosopher Kautilya discussed that era's government in his book Arthashastra. "Whoever curses the king, criticises his council, or does any harm against the kings, that person's speech should be kept under control," he wrote. Further, in the statement, he also said that "when a judge threatens, intimidates or silences one of his opponents in court, he must be punished".⁴

There was no legal definition of contempt of court in India before 1952, but that changed with the passage of the Contempt of Courts Act, which resulted in the adoption of the 1952 statutes. Establish. All of India, except Jammu and Kashmir, is subject to this regulation. The Supreme Court now has the authority to penalise lower courts for contempt under this law. This law gives the High Court the authority to punish lower court contempt. The Contempt of Courts Statute, 1926, which was in force in the states of Rajasthan and Saurashtra, is repealed by this act. Although these rules have been proposed before, it may surprise you to hear that they do not offer a clear explanation of the term "contempt" There is still a lot of confusion over the law of contempt, according to a definition of the word "contempt." The two fundamental rights guaranteed by the Indian Constitution—freedom of the individual and freedom of speech and expression—should be the basis for how this law is handled.⁵

At that time, in need of a measure to tighten or amend the laws the current contempt statute was introduced in Lok Sabha. On April 1, 1960, Shri BB Das Gupta proposed this bill. Following consideration of the measure, the administration decided that the current law required change. So they formed a special committee to investigate the situation or review the statute already in place. H.N. Sanyal, who presided over the committee's creation in 1961 and delivered its final report on February 28, 1963, was its chairman. 1971⁶. Contempt of Court

⁴ Amanat Raza, 'Contempt of Court, 20 August 2019) <<https://blog.ipleaders.in/contempt-of-court-2/>> accessed 25 July 2022

⁵ ibid

⁶ Contempt of Court Act 1971

Act serves as the report of this committee. The Contempt of Court Act of 1971⁷, modified the process and application of enactment, which had been previously applied under the Contempt of Court Acts of 1926 and 1952. According to their different meanings, this statute separates contempt of court into criminal and civil categories.

THE RULES IN INDIA RELATING TO CONTEMPT OF COURT

Article 129 of India's 1950 Constitution⁸

It stipulates that the Supreme Court is the "Court of Records" and possesses all of those courts' authority, including the authority to impose sanctions for self-deprecation (contempt of itself).⁹

Article 142 (2) of the 1950 Indian Constitution¹⁰

Also covered in this article is judicial contempt. This article states that the Supreme Court has full authority to require the attendance of any person, produce any document, or reserve the right to punish anyone for contempt when legislation is passed by Parliament on the provisions referred to in paragraph 1 of this article. The CoC Act 1971¹¹ in India was approved by the Parliament in December of that year. The term "contempt" was not specifically defined by the legislature.

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1971's CONTEMPT OF Courts Act

In 2(c) of the 1971 Act,¹² criminal contempt is defined as any spoken, writing, or other visibly expressed matter or a person's activity. Notorious or likely to cause controversy, minimise or tend to undercut the court's authority, or Obstructing or likely to obstruct, impede, or tend to interfere in any way with the administration of justice, or Prejudice or interference with or tend to impede the correct conduct of any judicial procedure.

⁷ ibid

⁸ The Constitution of India 1950, a 129

⁹ Amanat Raza, 'Contempt of Court, 20 August 2019) <<https://blog.ipleaders.in/contempt-of-court-2/>> accessed 25 July 2022

¹⁰ The Constitution of India 1950, a 142(2)

¹¹ Contempt of Court Act 1971

¹² ibid

PENALTIES FOR CONTEMPT OF COURT

According to Section 12(1)¹³ of this Act, a person who is accused of contempt of court may be sentenced to a term of simple imprisonment of up to six months, a fine of up to two thousand rupees, or both of these types of penalties. However, if an accused offers an apology and the court accepts it, only then can he be spared from the penalty for contempt of court. Otherwise, he may be freed or the sentence that was given to him may be remitted. The court cannot punish itself or another court for contempt of court beyond what is specified in the relevant section of this Act.¹⁴

REDRESS AGAINST A PUNISHMENT ORDER

The Contempt of Court Act, 1971¹⁵ has been amended in 2006 to include Section 13. According to this Section, there are several instances or circumstances in which contempt of court cannot be penalised.

1. No Court subject to this Act shall be punished for contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends to substantially interfere with the due administration of justice, as stated in Clause (a) of Section 13 of the Act.
2. If the court determines that the act was carried out in the public interest and the request to invoke that defence is genuine, it may grant the defence of justification of truth, according to Section 13 of this Act, Clause (b) of the Act, 2006.

PRASHANT BHUSHAN'S POSITION IN THE CASE OF CONTEMPT AGAINST HIM¹⁶

He said that the two tweets in which he was accused of contempt of court were part of his right to free speech and constituted sincere criticism of the court. Furthermore, he argued that the tweets were aimed solely at the current CJI and the three past CJIs as individuals and were not

¹³ Contempt of Court Act 1971, s 12(1)

¹⁴ Amanat Raza, 'Contempt of Court (20 August 2019)' <<https://blog.ipleaders.in/contempt-of-court-2/>> accessed 25 July 2022

¹⁵ Contempt of Court (Amendment) Act 2006, s 13

¹⁶ *In Re Prashant Bhushan & Anr* (Supreme Court Of India, 31 August 2020)

intended to interfere with the justice process. He happily accepted the sentence of fined him 1 rupee but he did not agree to apologize for the tweets.¹⁷

INTERNATIONAL REACTION TO THIS JUDGMENT

The International Commission of Jurists (ICJ) found that the Supreme Court's conviction of contempt for Advocate Prashant Bhushan appeared to be inconsistent with the provisions of the International Covenant on Civil and Political Rights¹⁸, India is a party to it as well. The ruling could have a chilling effect on the exercise of protected freedom of speech in India. A particularly large space should be devoted to debate and discussion on issues such as the role of the judiciary, access to justice and democracy, by members of the public, including through public comment on the courts.

THE NATION'S MOST POWERFUL COURT IS AFRAID OF STAND-UP COMEDIANS AS WELL

Recently a famous standup comedian Kunal Kamra was charged with contempt of court just because he made a few jokes about how quickly bail was granted to Arnab Goswami in abatement of a suicide case. The standup comedian didn't apologize and decided instead to remind the court of his greatness which cannot be harmed just by some mere jokes.¹⁹

EVEN THE HONOURABLE JUSTICES ARE NOT SAFE FROM THIS DRACONIAN LAW.

The Case of Justice C.S Karnan²⁰

He was the first sitting High Court Judge to be jailed for six months on the accusation of Contempt of Court. In February 2017, a contempt of court proceeding was initiated against him after he accused twenty Judges of the Higher Judiciary of Corruption. He wrote a letter to The

¹⁷ Legal correspondent, 'Contempt case: Prashant Bhushan pays ₹1 fine, says review petition being filed' (The Hindu, 14 September 2020) <<https://www.thehindu.com/news/national/prashant-bhushans-conviction-seems-at-odds-with-international-free-speech-law-international-commission-of-jurists/article32496322.ece>> accessed 24 July 2022

¹⁸ International Covenant on Civil and Political Rights (ICCPR), 1966

¹⁹ NDTV, 'Top Court Adjourns Contempt Case Against Comic Kunal Kamra For 4 Weeks' (NDTV, 22 February 2021) <<https://www.ndtv.com/india-news/supreme-court-adjourns-contempt-case-against-comic-kunal-kamra-for-4-weeks-2375911>> accessed on 24 July 2022

²⁰ *Justice C.S. Karnan vs The Honourable Supreme Court Of India* (Supreme Court Of India, 23 August 2017)

Current Prime Minister of India against this but he did not provide any supporting documentation to back his claims.²¹

ISSUES TO PONDER UPON

1. Does egocentricity suit our supreme bastion of fundamental rights?
2. Can narcissism be a characteristic of the apex guardian of our democracy?

CONCLUSION

The 1971 Act should be amended and should address the following:

Freedom of speech and no contempt for the courts

According to Article 129²² of our constitution, the Supreme Court of India in the court of record and has complete authority over contempt itself, including the ability to punish. Judge Kurian Joseph now claims that the case²³ raises important legal issues on how to read the Indian Constitution and has significant legal ramifications. The Constitution requires that the case be heard (this should become a mandatory procedure).

Right of Appeal

There is no guarantee when the Supreme Court convicts in a criminal contempt case "suo moto". There should be a provision for an intra-court appeal against an order of conviction in criminal contempt passed in the first instance by the SC.

Global Standard

In most legal systems around the world, it is just a civil offence punishable by a fine. India should pass similar legislation. You shouldn't punish someone for stating facts, it should not be a crime in the free world to offend someone, as professor Jordan Peterson puts it, "In pursuit of truth you have to risk to be offended." And truth should always prevail.

²¹ Amanat Raza, 'Contempt of Court' (20 August 2019) <<https://blog.ipleaders.in/contempt-of-court-2/>> accessed 25 July 2022

²² The Constitution of India 1950, a 129

²³ *In Re Prashant Bhushan & Anr* (Supreme Court Of India, 31 August 2020)

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