

## ANALYSIS OF THE CONTRIBUTIONS OF T.T. KRISHNAMACHARI IN THE CONSTITUENT ASSEMBLY DEBATES

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*The making of the Indian Constitution has been one of the most significant events in the history of governance and democratic politics of the world. Indian constitution is the lengthiest constitution involving various stakeholders who have been men of high intellect and qualifications to draft the constitution for such a vast and diverse nation. Among such men was T.T. Krishnamachari whose contribution to areas of finance and taxation has provided a strong backbone to the economic set-up of the nation. This article explores the role of T.T. Krishnamachari in the making of the Indian Constitution. It further elaborates on the role of Krishnamachari in the creation of India's monetary policy and banking structure. This article overall dives into the constituent assembly debate and the involvement of TT Krishnamachari in those discourses for laying the seeds of India's modern economic system.*

**Keywords:** *Debates, Constitution, Monetary Policy, Banking Structure.*

### INTRODUCTION

Tiruvallur Thattai Krishnamachari was a member of the Drafting Committee of the Constituent Assembly. As a member of the Drafting Committee, he dedicated 4014 hours to various assignments of the committee. He also served as the Finance Minister under the council of Prime Minister Pandit Jawaharlal Nehru. During his tenure, he brought various key tax reforms regarding capital gains, wealth, estate, and expenditure. He was born to T.T. Rangachari, a judge of the Madras High Court. He completed his degree from Madras Christian College. In 1928, he formed the TTK Company, an Indian corporate conglomerate. T.T. Krishnamachari was initially elected as an independent member of the Madras Legislative Assembly before later joining Congress. Later, he was elected as a member of the Constituent Assembly as well. He held the portfolios of the Steel Ministry, the finance ministry for two periods, and the Ministry of Commerce and Industry for once. He also made important contributions to the setting up of financial organizations such as the Industrial Development Bank (IDBI) and the Unit Trust of India. T.T. Krishnamachari was among the founders of modern India. He contributed to the development of the nation's fundamental and

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economic infrastructure. Other than introducing path-breaking tax reforms he had also introduced social security schemes during his tenure.

### **OVERALL CONTRIBUTION OF T.T KRISHNAMACHARI**

Tiruvallur Thattai Krishnamachari played an active role in the constituent assembly and also took part in many constitutional debates. He spoke on various issues. His contribution ranged from small issues like who would pay the emoluments for the governor of the state or whether it would be fixed by the parliament or the state since appointing authority of the governor is the President.<sup>1</sup> He talked about issues such as human trafficking and the inclusion of the word devadasi in Article 23.<sup>2</sup> He made several contributions to the Government's relationship with the princely states. In this issue, he contributed to issues like the allowances to be paid to the rulers of the princely states. He also talked about the succession of princely states into One India.

A significant contribution was made by him regarding federalism in India. He had participated in debates regarding the power of the governor and the concentration of power in the hands of the centre.<sup>3</sup> He debated on subjects that were to be included in the Union List. He also gave his opinions about the power of the president to grant pardons. He gave his opinions on the concept of double jeopardy. The most significant and important contribution made by him is regarding the reasonable restriction of free speech and the inclusion of the words Contempt of court as one of the restrictions of Article 19(2) of the constitution. This amendment of Contempt of court moved by T.T. Krishnamachari had a huge impact on the freedom of speech in India.

### **EXPLANATIONS OF THE PROVISION ON WHICH HE CONTRIBUTED**

T.T Krishnamachari moved an amendment in clause (2) of the draft Article 13 that after the word 'defamation' the word 'Contempt of court' be inserted on the 17th of October 1949. The words Contempt of court were added as another reasonable restriction on the freedom of speech. The main Article in the constitution is affected by Article 19 which talks about the protection of rights like the freedom of speech. Draft Article 13 or Article 19 of the

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<sup>1</sup>Volume 7' (*Constitution of India*, 08 January 1949)

<https://www.constitutionofindia.net/constituent-assembly-debate/volume-7/> accessed 13 March 2023

<sup>2</sup>*Ibid*

<sup>3</sup>Volume 9' (*Constitution of India*, 08 January 1949)

<https://www.constitutionofindia.net/constituent-assembly-debate/volume-9/> accessed 13 March 2023

Constitution of India talks about the freedom given to citizens which includes the freedom of speech and expression, freedom of assembly freedom of movement inside the territories of India, Freedom to live, work, and establish their business anywhere on Indian territory, freedom to practise any profession and freedom to engage in any activity.<sup>4</sup>

### **DETAILED SUMMARY OF THE DEBATE**

Krishnamachari was a staunch believer that rights should not be absolute and should have reasonable restrictions. He said there can be no absolute right and every right has to be 'abridged' in some manner. He said that no right could be used absolutely and to the fullest extent and therefore there had to be a balance between the 2 opposing views. He argued that since we got our freedom recently everyone may want to exercise their rights unfettered. He argued that if the state wanted to continue unimpaired then it would be important to abridge certain rights and put checks on them. He argued that for maintaining the stability of the state those rights which have been guaranteed by the constitution will have to be abridged.

He also took into understanding the economic implications of fundamental rights. For example, in subsection (f) of the draft, Article 13<sup>5</sup> talked about the right to acquire, hold and dispose of property. He defended this section and said that any person would want his valuables to be secured with him. This shows that he had both liberal and conservative views regarding fundamental rights and it would be wrong to characterize him as a politician with conservative opinions only. Krishnamachari also gave his views on sedition. He argued that the word sedition was detested by most Indians since this law has been used against our leaders and has long been misused to suppress our political agitations. But he suggested restricting the use of the law of sedition but not completely removing it. He argued that the law should only be used where the entire state was sought to be overthrown, or undermined by force which would lead to public disorder.

The arguments of restriction given by Krishnamachari for maintaining the stability of the state were opposed by Lakshminarayan Sahu, who argued that the sub-clauses (2), (3), (4), (5), and (6) which put restrictions on the freedoms should be deleted. He said that unless these provisions are deleted the citizens of India would not be able to fully enjoy their freedom and they would live in the condition of fear. He, therefore, submitted that all the

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<sup>4</sup>Volume 8' (*Constitution of India*, 08 January 1949)

<https://www.constitutionofindia.net/constitution-assembly-debate/volume-8/> accessed 13 March 2023

<sup>5</sup> Constitution of India 1949, art 13

restrictive provisions to the draft Article 13 (Article 19) be deleted.<sup>6</sup> Some other members like Damodar Seth also suggested certain changes to the provision. He argued that the expression 'in the interest of the general public' is too expansive and would give excessive powers in the hand of the legislature and the executive. He also argued against the provision of emergency under which the freedoms enshrined under draft Article 13 could be suspended. Damodar Seth wanted fundamental rights to be placed out of the jurisdiction of the executive as well as the legislature.

Prof K.T Shah also suggested amendments to the draft Article 13. He wanted to add the words 'of thought, worship, of press and publication in the debate on draft Article 13 he wanted the inclusion of freedom of worship. He also desired to incorporate press freedom. He used the United States of America as an example to specifically highlight press freedom, even though it is entailed by the freedom of speech and expression.

## CONTEMPT OF COURT

It's crucial to comprehend what a court of record is to comprehend the word and concept of Contempt of court. According to Article 129<sup>7</sup> of the Constitution, the Supreme Court is a court of record and has the authority to penalise for self-inflicted Contempt. A court is referred to as a 'Court of Record' if its actions and processes are documented for perpetual memory, proof or evidence. These documents are acknowledged to be more authoritative and their veracity cannot be contested. And any statements that challenge the veracity of these records are considered to be in Contempt of court.

Article 142(2)<sup>8</sup> of the Constitution deals with the 'Contempt of Court'. Article 142(2) states that the Supreme Court has entire jurisdiction to issue an order requiring anyone's attendance, the producing of any of the documents, or imposing sanctions for Contempt if any law is passed by the Parliament addressing the provisions mentioned in the first clause of this Article. Furthermore, even while the Supreme Court has the authority to impose penalties for Contempt of court, this does not indicate that it can take any action that is contrary to the

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<sup>6</sup>*Ibid*

<sup>7</sup> Constitution of India 1949, art 129

<sup>8</sup> Constitution of India 1949, art 142(2)

right to personal liberty.<sup>9</sup>As the protector of all the rights granted to us by the Indian Constitution, it must protect these rights and cannot infringe upon them itself.

There are 2 types of Contempt of court. There is civil Contempt and then there is criminal Contempt. Civil Contempt is committed when someone knowingly disobeys a court order, judgment, decree or another legal document.<sup>10</sup> In criminal Contempt, the most important thing is ‘publishing’ which might take the form of spoken or written words, signs and other visual representations. The restriction proposed by Krishnamachari in the constitution is of criminal Contempt as it relates to the freedom of speech and expression in Article 19<sup>11</sup>.

Section 2(c) of the Act defines ‘Criminal Contempt’. The provision originated from the Regulating Act of 1773 which gave the powers to the mayor’s court to punish people for Contempt same as the power given to the King’s Bench in England. In colonial times, all courts of records were given the power to penalise for Contempt. The first legislation to be passed in India on the subject of Contempt of court was- The Contempt of Courts Act 1926.

The Government of India Act 1935 also talks about the Contempt powers of the Federal Court so it can also be fair to say that the Contempt powers of the courts of independent India have been derived from legislation passed by the Britishers. The provision to try cases for Contempt was given in the Contempt of Courts Act 1971.<sup>12</sup> Proceedings for Contempt of court can be initiated Suo Moto by the court and the prosecutor and the judge are the same authority for Contempt of court. Over the period in post-independent India, various challenges have been made to the provisions of Contempt of court.

Draft Article 13 which then became Article 19 before its passing had different reasonable restrictions. The reasonable restrictions include libel, slander, defamation, sedition or any other which offends against decency or morality or undermines the authority and foundation of the state. During the debate, the members mostly talked about the limitations placed on excising the freedoms outlined in this draft article. Some members believed that no right could be absolute and there must be restrictions on some specific situations. Supporters of the

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<sup>9</sup>V Govindu, ‘Contradictions in Freedom of Speech and Expression’ (2011) 72 The Indian Journal of Political Science 641

<sup>10</sup>‘Civil Contempt of Court’ (*Findlaw*, 20 June 2016)

<<https://www.findlaw.com/litigation/going-to-court/civil-contempt-of-court.html>>accessed 13 March 2023

<sup>11</sup> Constitution of India 1949, art 19

<sup>12</sup>S. H. Bailey, ‘The Contempt of Court Act 1981’ (1982) 45(3) The Modern Law Review <<https://www.jstor.org/stable/1094986>>accessed 13 March 2023

limitations imposed said that these restrictions ensured the unhindered operations of the state and the constitution.

A similar argument was given by T.T Krishnamachari who argued that for the unhindered operations of the court, a restriction was required on freedom of speech so that the court can function properly. Multiple amendments over the course of constitutional debates have been made to Article 19 or draft Article 13. A member first proposed adding the words reasonable restrictions so that the legislation in the future could be subject to judicial review and the courts could then strike down arbitrary legislation. This amendment was adopted. Another member argued that the freedom of speech and expression should not be restricted by the law of sedition. He said that the term 'Sedition' was unclear and vague and subject to misuse. This resolution was also adopted and therefore sedition is now not among the restrictions that have been placed on our freedom of speech. To the amendment proposed by Krishnamachari for introducing Contempt of court as a restriction on freedom of speech, a member opposed this on the ground that the Contempt law may be misused by the judges.

Several amendments were proposed to the draft of Article 13 which were rejected. To the draft of Article 13, a sub-clause (e) was added which talked about the 'secrecy of postal, telegraphic and telephonic communication.' Various members talked about inserting provisions such as 'freedom of thought' and the words 'of thought and worship; of press and publication'.<sup>13</sup> After the word expression in the article. Other amendments which were rejected include adding the restrictions, that no citizen the exercise his jeopardize state security, incite hostility among communities or take any action which disturbs peace or tranquillity in the exercise of his right. Draft Article 13 was adopted on 2nd December 1949 and then became Article 19 of the constitution of India. Rough draft Article 279& Article 358 talks about the suspension of Article 19 in case of emergency.

## **BRIEF HISTORY**

The law of court Contempt initially existed in India during the 'Ramayana and Mahabharata era', when the king was referred to as 'sabhapati' and the courts were known as 'sabha'. In this case, the sabhapati handled the administration of justice, and justice must be served by dharma. And anyone who disparages the Sabhapati's decision at that time will face a penalty.

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<sup>13</sup>'Volume 10' (*Constitution of India*, 08 January 1949) <<https://www.constitutionofindia.net/constitution-assembly-debate/volume-10/>>accessed 13 March 2023

The aforementioned law of Contempt, which was not written in ancient times, was employed to uphold the sabha and sabhapati's integrity and dignity. Throughout various periods and empires, it differs. Since it is not legislated, the definition of disdain might vary depending on one's religion and ethical code. As of right now, we refer to it as having its roots in English law, although India invented this idea and has a long history with it. In England, the Supreme Courts of Record have long been empowered to punish those who brought shame to the courts or judges. The legal committee of the Privy Council was the first to recognise this right, noting that the Contempt of court offence and the punishment options available to Indian High Courts are the same as those available to the Supreme Court of England. The first Contempt law in the nation, the Contempt of Courts Act, was enacted in 1926.

### **CONSTITUTIONAL SANCTION FOR CONTEMPT**

- Article 129 has given the power to the Supreme Court to punish the Contempt for itself.
- Article 142(2) also gives power to SC to punish Contempt.
- Similarly, high courts are also given the power to punish under Article 215.

### **INTRICACIES OF CONTEMPT OF COURT**

More than anyone else, attorneys need to be protected in court as whistle-blowers because they are the Constitution of India's first line of defence. Contempt is used to safeguard the institution and stop meddling with the administration of justice. A crucial lesson to learn is the need to not weaken the institution's majesty or the judges' authority. The author went beyond acceptable criticism of a decision and into an entirely new realm. Legitimate criticism of decisions is acceptable but we must draw the line at harsh, illogical and personal attacks on judges that compromise the institution's overall credibility. When it comes to the law of Contempt, Lord Denning, a former master of the rolls in Britain, said the following in 1968: "Let me stress at the outset that we will never use this jurisdiction as a way to protect our dignity or to repress those who speak against us. We neither dread nor despise criticism. Because something much more significant is at risk. It is on par with the right to free expression itself. Every man has the right to have an opinion on topics of public importance, whether they are in or out of Parliament, in the press or on the air. We must rely on the fact that our own one will speak for us."

## CONTEMPT AND ITS OBJECTIVES

The Contempt of Courts Act 1971 came on 24 December 1971 into effect to define and restrict the authority of specific courts to punish Contempt of court and regulate their practice in this regard. This means that the jurisdiction of the courts concerning Contempt is limited to protecting the dignity of the existing judicial system. The court must exercise discretion when using this authority and refrain from being overly sensitive or emotionally volatile. 'Contempt of court' refers to either 'criminal or civil Contempt'.<sup>14</sup> However, Section 2(b)<sup>15</sup> defines 'civil Contempt' as the 'wilful disobedience of any judgement, decree, direction, order, writ, or another process' of a court or the wilful breach of an undertaking made to a court. On the other hand, The publication of any matter or the performance of any other act, whether by words, spoken or written, signs, visible representations, or any other means, is defined as 'criminal Contempt'<sup>16</sup>.

## CONSTITUTION OF INDIA AND CONTEMPT OF COURT

Civil Contempt is said to have taken place if someone wilfully contradicts an order given by the court to perform or refrain from performing an act. When the court's authority to enforce adherence to its orders is used, civil Contempt results. Criminal Contempt, on the other hand, is unlawful. It includes openly disrespecting judges, insulting judges in public, disparaging judges or courts, or engaging in conduct that seeks to impede the administration of justice. A person commits criminal Contempt when their actions have the potential to defame the legal system and its administration or when they have the potential to impede or harm litigants in court.

To further comprehend the idea of Contempt of court, let's look at an example. Let's imagine a scenario where an ordinary man lost faith in the judiciary and the impact of Contempt was of such sort. Let's imagine that instead, if the local MLA showed up and started verbally abusing the court, how much respect would the average person have for the institution since the aforementioned MLA had essentially removed a crucial pillar of democracy?

As per the observations of Justice Wilmot in *R. v Almon* made as early as 1765: whenever men's adherence to the law is so fundamentally compromised, it is the most fatal and

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<sup>14</sup>Contempt of Courts Act 1971, s 2(a)

<sup>15</sup>Contempt of Courts Act 1971, s 2(b)

<sup>16</sup>Contempt of Courts Act 1971, s 2(c)



dangerous obstruction of justice, and in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of Judges, as appropriate individuals, but because they are how the King's justice is communicated to the people. It is very contradictory in nature and challenging to explain whether or not the legislation about Contempt of court affects two important 'fundamental rights' of the citizen, the first of which is the 'right to personal liberty' and the second of which is the right to freedom of speech and expression.

The distinction between criticism and vilification is quite fine. You are at liberty to do whatever as long as it does not stand in the way of my independence, which is one of the fundamental tenets of independence. The same applies to determining whether or not it constitutes Contempt. Criticism is acceptable however if the institution is being demeaned and vilified or you are attempting to undermine its integrity, that is disdain.

According to Article 129<sup>17</sup>, the Supreme Court has the power to punish for Contempt of itself 'Enables the Supreme Court of India to investigate and punish any individual for its Contempt' reads Article 142(2)<sup>18</sup>. Every High Court is given the authority to punish for Contempt of itself under Article 215<sup>19</sup>. The Indian Constitution's Articles 129 and 142(2) give the Supreme Court of India the power to punish Contempt rather than Section 15<sup>20</sup>.

**In the following lines, the Supreme Court emphasised the necessity of Contempt of court:** The existence of civilization in society depends on the presence of an independent judiciary and a climate that allows judges to function independently and fearlessly. It is necessary to abide by the court's writ. The harmed parties are deterred from acting by the law by the binding effectiveness of the court's commands and the respect for its orders. They are deterred because they know they have access to an effective, civilised method of dispute resolution wherein they will be heard and their legitimate grievances will be addressed. The court sees it as its duty to actively defend against any attack on its honour since any action or inaction that diminishes the court's honour is taken seriously by society. The Supreme Court uses this authority to penalise behaviour that tends to obstruct the administration of justice. Among other things, the following have been deemed to be acts of Contempt of court:

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<sup>17</sup> Constitution of India 1949, art 129(8)

<sup>18</sup> Constitution of India 1949, art 142(2)

<sup>19</sup> Constitution of India 1949, art 215

<sup>20</sup> Contempt of Courts Act 1971, s 15

- Accusations that are intended to diminish the public's faith in the judges' honesty and belittle the court's dignity.
- A strategy is used by one side to influence the outcome of a case against the other party.
- To arouse public opinion over the issue up for decision in court and to attempt to sway the judge in his favour.
- Using flattery or a thinly veiled threat, an attempt is made to sway the Judges' judgement and prevent them from carrying out their duties.
- A scandalous conduct or publication that casts doubt on the integrity of a judge while performing his duties.

Wilful disobedience or failure to obey a court order. Private parties who disobeyed or violated Supreme Court directives have been found in Contempt of court in many instances:

- Water in the Gomti River was contaminated as a result of effluents being discharged from a company's distillery. The corporation was required by the Supreme Court to fix any issues with the effluent treatment plant by a specific deadline. Despite failing to do so, the firm continued to operate its plant. The Court determined that the company's deliberate and planned breach of the court order showed a defiant attitude on its behalf. The company was fined Rs. 5 lakhs by the court, with the money going toward cleaning the Gomti River.
- Newspaper Articles critiquing a Supreme Court ruling, accusing the judges of having improper motives, and attempting to give the public the impression that the Supreme Court judges decide cases based on unrelated factors that have been deemed to be in Contempt of court. The Court has remarked that no greater harm than that could be envisioned if the public were to believe that the judges in the highest court make decisions based on unrelated factors, undermining public trust in the administration of justice. Note-Third parties are not permitted to intervene in a case of Contempt of court since it is between the court and the Contempt. Therefore, intervention applications cannot be maintained.

### **SUPREME COURT AND THE CONTEMPT OF COURTS ACT 1971**

Rule 3 of the 1975 Rules to Regulate Proceedings for Contempt of the Supreme Court states this. The following actions may be taken by the Court in cases of Contempt other than the

type described in Rule 2: Suo motu on the petition of the Attorney General or the Solicitor General or on the petition of a person, with the written agreement of the Attorney General or the Solicitor General in the event of criminal Contempt.

There are three ways to start a Contempt case, according to a simple reading of Rule 3. Suo motu is the first option and the petitions filed by the 'Attorney General' or the 'Solicitor General' are the second and petitions filed by anyone else are the third. Where criminal Contempt is involved, the Attorney General's or the Solicitor General's approval is required. The power to hold someone in Contempt of the Supreme Court of India—the highest court in the country— is a constitutional right granted to the court, and as such, it cannot be restricted or eliminated by any legislative act. The Contempt of Courts Act 1971 on the other hand, is a piece of legislation. Even though the 1971 Contempt of Courts Act essentially governs the law of Contempt. It is widely accepted practice in India that Articles 129 and 215 of the Indian Constitution deal with the authority of the Supreme Court and the High Court. Due to this circumstance, 'judicial self-dealing' is made possible. The Supreme Court of India has stated that slanderous criticism of a judge over a decision or past behaviour will inevitably hurt public confidence in the judiciary in our nation. If that happens, the administration of justice will undoubtedly suffer.

**Issues with Contempt Law:** All citizens have 'the right to freedom of speech and expression' under Article 19(1)(a)<sup>21</sup> of the Constitution, although 'Contempt clauses' limit people's ability to criticise how the court operates. Due to the very subjective nature of the law, the judiciary may utilise arbitrary means to stifle public criticism.

### **NEED FOR CONTEMPT OF COURT**

The fundamental argument put forward by T.T. Krishnamachari during the constitutional debates on the topic of restrictions to freedom of speech was that no right can be absolute. There need to be reasonable restrictions to be put in place so that no misuse of the rights. In the freedom of speech and expression, there are various reasonable restrictions placed, one of them which he suggested was 'Contempt of court'.

Krishnamachari identified that there was a loophole in the reasonable restrictions that were being placed on freedom of speech, and plugged it by introducing Contempt of court as a

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<sup>21</sup> Constitution of India 1950, Art 19(1)(a)

reasonable restriction that prohibited any unreasonable statements to be made against the judiciary. As discussed earlier, the Contempt of court introduced by Krishnamachari was criminal. The Judiciary has an instrumental part to play in ensuring justice and equality for all people and institutions; the constitution's authors retained the sanctity and reputation of the revered institution. Provisions were put in place in articles 129 and 215 which allow the courts to declare someone in Contempt if they try to undermine, diminish or interfere with their power. As discussed, Contempt of court is like a trump card in the hands of the judiciary which it can use when it feels that its authority is at risk of being undermined.

The Courts at times will have to make judgements to uphold the law, which may go against the popular will of the people. This means that it is necessary to have some sort of protection for the courts and reasonable restrictions on speech related to the same will act as a safeguard against the people interfering with the working of the Judiciary and impinging on the authority of the courts. Keeping this in mind, the framers of the Constitution acted upon Krishnamachari's suggestion and added 'Contempt of court' to the reasonable restrictions that were placed on Article 19(2) of the Constitution. This provision significantly helps in the functioning of the courts and serves the purpose of a deterrent against disobedience of the court's orders. Through civil Contempt, the high courts and Supreme Court have the authority to track non-compliance, and if necessary, start Contempt cases.

**Contempt of Court (Amendment) Act 2006:** Contempt of Court Act 1971 provides the outline to penalise someone who is charged under the offence of Contempt of court and specifies the procedure for the same. The Contempt of Court (Amendment) Act 2006 revised Section 13 of the Contempt of Court Act 1971. 'The defence of truth' was added under section 13.<sup>22</sup> The amended section now reads – *“No court may impose a sentence under this Act for Contempt of court unless it is satisfied that the Contempt is of a nature that it substantially interferes, or tends substantially to interfere, with the due course of justice; (b) the court may permit, in any proceeding for Contempt of court, justification by truth as a valid defence if the circumstances of the case warrant it.”*

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<sup>22</sup>Jajati Keshari Samantasinghar, 'Contempt of Court as Defined in "Contempt of Courts Act 1971"' (2017) 3(5) Journal of Advance Research in Social Science and Humanities <<http://dx.doi.org/10.53555/nssh.v3i5.170>> accessed 16 March 2023

## WOULD T.T. KRISHNAMACHARI HAVE SUPPORTED THE AMENDMENTS?

It is very difficult to ascertain the position that would have been taken by T.T. Krishnamachari about the Contempt of Court (Amendment) Act 2006. There can be arguments for both sides that he could have been for or against this amendment. Unfortunately, we may not get to know his views as he is no more. Nevertheless, after analysing the Constituent Assembly Debates, it seems fair to say that Krishnamachari would likely have given his support to these amendments. Even though he was the one who introduced Contempt of the court along with the other reasonable restriction in what is now Article 19 in Part III of the Indian Constitution, he seemed reasonable enough during the debates. There is nothing in the debates that suggests that he would have been opposed to the rights of individuals to fairly criticize the judiciary.

**Procedure for Contempt of Court:** The Supreme Court as well as the different High Courts through Articles 129 and 215 are empowered to initiate Contempt proceedings against individuals as they see fit. When a Contemptuous act or words take place in front of the court, proceedings can be started by the court *Suo motu*, or on its own, and call for the person who is accused of committing the Contempt to come before the court. When it comes to acts of Contempt performed in their presence, courts must hold these hearings as promptly as possible, ideally on the same day. People who are charged with Contempt retain the right to a hearing in court to provide evidence in support of their cause. During a Contempt trial, detention is permitted. Procedures for Contempt can only be taken with the authorization of the relevant law officer when suspected disrespectful conduct or remarks take place outside of a courtroom.<sup>23</sup>

**Punishment for Contempt of Court:** According to the 1971 Contempt of Courts Act, both civil and criminal Contempt have the same penalty. According to the Act, a fine of up to 2000 may be added to a maximum sentence of six months in jail. According to the Contempt of Courts Act of 1971, the court may use its discretion to decide if an apology has been adequate and waive the punishment in such cases.<sup>24</sup>

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<sup>23</sup>‘CONTEMPT OF COURT IN INDIA’ (*Prime Legal*, 04 December 2022)  
<<https://primelegal.in/2022/12/04/contempt-of-court-in-india/>>accessed 16 March 2023

<sup>24</sup>*Ibid*

**Defences under Contempt-** The following are allowed as defences in Contempt of court proceedings–

- It permits an exemption for persons who unintentionally publish or carry out conduct that would otherwise constitute Contempt, provided they had a reasonable belief that no legal action was currently being taken against them or that the words or deeds they had committed contained nothing Contemptuous.
- The Act expressly excludes fair and accurate reporting on legal procedures as well as legitimate and genuine criticism of the judiciary.
- The truth may be used as a defence to Contempt under the 2006 amendments to the Contempt of Courts Act only if the defendant was acting in the ‘public interest’.

## LAW COMMISSION REPORT ON CONTEMPT OF COURT

The Law Commission of India's report on the 1971 Contempt of Courts Act was delivered under the chairmanship of Justice B.S. Chauhan. The report looked at whether the Contempt mentioned in the act should be limited to civil Contempt, which is the deliberate defiance of the court orders. The Commission concluded that there was no need to change the Act.<sup>25</sup> They listed the following reasons:

**1. Constitution is the source of Contempt Power-** The Commission noted that the Constitution is the source of the superior court's authority to impose Contempt. The Act simply specifies the process for an inquiry and sanctions for Contempt. Therefore, the removal of the offence from the Act will not affect the higher courts' inherent constitutional authority to punish anyone for their Contempt. This authority will endure irrespective of the 1971 Act.

**2. Comparison with other countries-** The Committee observed that the UK had removed the offence of ‘scandalising the Court’ from its Contempt laws. It did point out, however, that two variations between the conditions in India and the UK justified the legality of the offence in India. First, there are still many criminal Contempt charges being brought in India, but the last time Scandalising the Court was committed in the UK was in 1931. Second, other laws in

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<sup>25</sup> Sanya Dhingra, ‘Law Commission Says No Changes to Dreaded Contempt of Court Law’ (*The Print*, 18 April 2018) <<https://theprint.in/india/governance/law-commission-says-no-changes-to-dreaded-contempt-of-court-law/50533/>>accessed 16 March 2023

the UK continue to make it illegal to scandalise the court. The Commission noted that India would have a 'legislative gap' if the offence was to be repealed

**3. Constitution is the source of Contempt Power-** The Commission noted that the Constitution is the source of the superior courts' authority to impose Contempt. The Act simply specifies the process for an inquiry and sanctions for Contempt. Therefore, the removal of the offence from the Act will not affect the higher courts' inherent constitutional authority to punish anyone for their Contempt. This authority will endure irrespective of the 1971 Act.

**4. Adequate Safeguards-** The Commission highlighted that the Act has several protections in place to defend against its potential abuse. The Act, for instance, specifies the circumstances under which Contempt is not amounted to and hence cannot be penalised. These clauses imply that not every case of Contempt will be prosecuted by the courts. The Commission also stated that there was no need for an amendment to the Act because it had already passed the test of judicial scrutiny.

**5. Clarity in definition-** The Commission noted that altering the definition of Contempt would result in more ambiguity and an overall lack of clarity about what constitutes Contempt of court. Since the Supreme and High Courts would continue to exercise the power of Contempt bestowed upon them by the Constitution, it would lead to various definitions and interpretations in different cases as to what Contempt is, since there is no definition of Contempt in any Act. This would lead to inconsistencies in the different cases. Hence, the commission recommended keeping the definition of Contempt to maintain consistency.<sup>26</sup>

## LANDMARK CASES IN CONTEMPT OF COURT

**Zahira Habibullah Sheikh and Others v Gujarat State and Others:**<sup>27</sup> The judge in the particular instance determined that the High Court and the Supreme Court could both employ the Contempt of court procedure that had previously been approved by Parliament. This shows that Section 12's provisions, which call for a maximum fine of Rs. 5000 and a six-month sentence, are in effect.

<sup>26</sup>'Review of the Contempt of Courts Act, 1971' (*PRS Legislative Research*) <<https://prsindia.org/policy/report-summaries/review-contempt-courts-act-1971>> accessed 16 March 2023

<sup>27</sup>*Zahira Habibullah Sheikh (5) v State of Gujarat* (2006) 3 SCC 374

**Supreme Court Bar Association v Union of India & Anr:**<sup>28</sup>In this instance, the judge ruled that the Supreme Court and the High Court could both apply the procedural requirements for Contempt of court that had previously been specified by Parliament. As a result, Section 12(1) of the Contempt of Court Act 1971 which provided for the highest punishment of ₹5,000 and a term of six months in prison—will apply to this situation.

**Sudhakar Prasad v Govt. of AP & Ors:**<sup>29</sup>This case and the Supreme Court Bar Association Case are comparable. The Supreme Court ruled in this case that the ability to penalise for Contempt is inherent in nature and that the Constitution's language only recognised the aforementioned pre-existing reality.

### CONTEMPORARY CASE INVOLVING CONTEMPT OF COURT

Prashant Bhushan Contempt of Court Case- The Prashant Bhushan case was a widely covered and popular Contempt of court case that happened back in 2020. Suo motu Contempt proceedings were started by the Supreme Court against the well-known public interest lawyer, Prashant Bhushan, for two tweets that he had put out.<sup>30</sup> In one of them, Bhushan categorically condemned the last four CJIs for their work which he felt was contributing to the destruction of Indian democracy. In the other, he shared an image of then CJI Bobde sitting on a bike without wearing a helmet or mask while keeping the Supreme Court in lockdown due to COVID.

Bhushan was found guilty of criminal Contempt by a three-judge Supreme Court bench on account of his tweets which asked him to reconsider his statements and give an unconditional apology.<sup>31</sup> He refused to apologize, and the Supreme Court delivered its verdict in this case on August 31, holding him guilty of criminal Contempt against the court, and was subsequently punished with a fine of a mere ₹1. This small fine is one of the reasons why this case came into the limelight in the first place. This case in turn sparked a debate on the Contempt of court and its potential misuse by the judiciary.

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<sup>28</sup> *Supreme Court Bar Association v Union of India*(1998) SC1895

<sup>29</sup> *Sudhakar Prasad v Government of A.P.* (2001) 1 SCC 516

<sup>30</sup> Editorial, 'Two Tweets' (*The Indian Express*, 23 July 2020)

<<https://indianexpress.com/article/opinion/editorials/prashant-bhushan-twitter-supreme-court-6518823/>>  
accessed 16 March 2023

<sup>31</sup> 'Breaking: Supreme Court Holds Prashant Bhushan Guilty of Contempt of Court for His Tweets, Hearing on Sentence to Be Held on August 20' (*Bar and Bench*, 14 August 2020)

<<https://www.barandbench.com/news/litigation/supreme-court-holds-prashant-bhushan-guilty-of-contempt-of-court-for-his-tweets>> accessed 16 March 2023



## CRITICISM OF CONTEMPT OF COURT

The power of the judiciary to initiate Contempt of court proceedings can be considered a weapon to fend off any interference with the administration of justice.<sup>32</sup> There is always a threat that this power that the court has been bestowed with by the Constitution, may be misused by it to pursue things other than ensuring the administration of justice. This holds particularly true for the second part of Criminal Contempt, which deals with the scandalising of the court. Critics consider this area of criminal Contempt to be frivolous, arbitrary and having the highest likelihood of being exploited by a judiciary that has been led astray from its genuine purpose.

In the Indian context, the superior courts, all the High Courts as well as the Supreme Court have been constitutionally empowered with Contempt of court. While one can make a case for Civil Contempt to exist, the 'scandalising of the court' part of criminal Contempt can be considered an unreasonable principle. Former judges and attorneys have regularly challenged courts' criminal Contempt punishment authority as having a dampening effect on free expression, having an overly broad meaning, and being vulnerable to abuse to protect the judiciary from criticism.<sup>33</sup> Markandey Katju, a retired Supreme Court judge asked for revisions to the 1971 Contempt of Courts Act so that the media might report on legal and judicial issues more freely and effectively.

The 'scandalisation of the court' part of criminal Contempt, like the concept of Contempt of court itself, was introduced in India by the British. It traces its origins to English Law, where it has been abrogated, so critics say there is no good reason we should be having such a law, as it has been revoked by the very same English Law from where it first emerged and has been abrogated so critics say there is no good reason we should be having such a law, as it has been revoked by the very same English Law from where it first emerged.

## DETAILED ANALYSIS OF HOW THE PROVISION WORKED OUT SINCE

**The Inception of the Constitution:** It is important to recognize TT Krishnamachari's contribution to the Contempt law, and it is even fascinating to delve into questions like

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<sup>32</sup>Freedom of Speech and Contempt of Court'(1970) 5(42) Economic and Political Weekly  
<[https://www.epw.in/journal/1970/42/special-articles/freedom-speech-and-contempt-court.html?0=ip\\_login\\_no\\_cache%3D0b11375012831d08544511e70324f25c](https://www.epw.in/journal/1970/42/special-articles/freedom-speech-and-contempt-court.html?0=ip_login_no_cache%3D0b11375012831d08544511e70324f25c)> accessed 16 March 2023

<sup>33</sup>Sanjay Hegde, 'Vague Definition of Criminal Contempt'(Frontline, 28 August 2020)  
<<https://frontline.thehindu.com/cover-story/vague-definition/article32439112.ece>> accessed 16 March 2023

whether it has been amended, why it has been amended and whether the amendment reflects the opinions of any members who opposed it as well as decisions made by the Indian Supreme Court and high courts. Although the current Contempt statute has indeed undergone revision, these adjustments have not taken into account the opinions of those who opposed the Article 13(2) Court of Contempt term. In India, neither honesty nor good faith served as a defence against the law of Contempt. Only in 2006 was this corrected by a change to the Contempt of Courts Act. The court also refused to recognize the act that gave the attorney general of India the authority to request approval before launching Contempt proceedings.

The 2006 modification to the 1971 Contempt of Courts Act makes it clear that the court may only punish for Contempt if it determines that the behaviour substantially impedes or is likely to substantially impede the proper administration of justice. This, however, was not the case in the Mid-Day case, in which the Delhi high court punished publication staff members for Contempt of court for publishing material that disparaged a retired Chief Justice of India. The defence of truth and good faith was raised in the middle of the day, but it was ignored.

### **Indian court cases involving Contempt of Court**

- The Supreme Court stated in *Duda P.N. v Shivshankar P*<sup>34</sup> that judges should not use Contempt jurisdiction to uphold their dignity. As long as the 'administration of justice' is not hampered or impaired, criticism of the legal system or judges should be tolerated in the free marketplace of ideas.
- Jeevan Reddy J. used the infamous 'Sullivan doctrine' in the *Auto Shankar* case,<sup>35</sup> which states that public figures must be open to harsh criticism and accusations as long as they are made with sincere diligence, even if unfounded.
- In *Indirect Tax Practitioners' Association v R.K. Jain*, S.C. observed that the Court may now permit truth as a defence if two conditions are met, namely (i) it is in the public interest and (ii) the motion for invoking said the defence is bona fide.<sup>36</sup>

### **RELEVANT POINTS RAISED BY OTHER MEMBERS OF THE ASSEMBLY**

It is important to take note of Bhargava's opinions on the law governing Contempt courts. Since then, Bhargava's cautions have come true. India's courts have frequently used the broad

<sup>34</sup>*P.N. Duda v Shivshankar P*(1988) 3 SCR547

<sup>35</sup>*R. Rajagopal v State of TN*(1994) 6 SCC 632

<sup>36</sup>Contempt of Courts Act 1971, s 13

reach of its Contempt powers to punish dissenting speech on the pretext that it undermines or disgraces the authority of the judiciary. This can be seen as more of a curtailment of free speech and less of the Court protecting its authority. That being said, the courts have rarely applied a stringent analysis to determine whether those actions threatened the administration of justice or interfered with it in any way.

For instance, the Supreme Court notoriously upheld an *E.M.S. Namboodiripad*, a former chief minister of Kerala, sentenced for contempt in 1970.<sup>37</sup> Namboodiripad reportedly gave a speech while serving as chief minister in which he said that class interests controlled and dictated the decisions made by judges. ‘To paint a highly misleading and terrible picture of the judiciary,’ stated Justice M. Hidayatullah, ‘is to characterize the judiciary as an instrument of oppression, the judges as guided and dominated by class animosity, class interests, and class biases, naturally favouring the rich over the poor.’ This is an attack on judges to instill in the public a general mistrust of and discontent with all court rulings. It erodes the legitimacy of the legal system and courts. The Court did not attempt to demonstrate any real connection between Namboodiripad's words and the alleged erosion of the judiciary's power. When the Supreme Court decided in 1996 that ‘any acts which bring the court into shame or disrespect or which violate its dignity or its majesty or question its authority’ constitute penal Contempt, a troubling trend was started. The ultimate result of this decision is typical of Indian free speech law: a complete rejection of individual choice and liberty by the courts, along with a conviction that some types of speech should be suppressed purely for their content rather than any actual anti-democratic harm resulting from their expression.

The Contempt of Courts Act of 1971 was revised by Parliament in 2006 to narrow the scope of the judiciary's authority. Two new protections for dissenters are now included in the statute. First, it stipulates that a court can only impose a term for Contempt of court if it is convinced that the Contempt is of a kind that significantly impedes or tends to significantly impede the proper administration of justice. Two, if the court determines that the dissemination of such content serves the greater public interest, truth in speech is now a recognized defence against Contempt proceedings. Despite these changes, courts nonetheless frequently see any alleged scandalization of the judiciary's power as a form of Contempt. The grounds offered by constitutional attorneys for the right to free speech are numerous.

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<sup>37</sup>*E.M.S. Namboodiripad v T. Narayanan Nambiar*(1971) 1 SCR 697

According to legal scholar Ronald Dworkin, these defences typically fit into either of two bigger groups. The first is based on the idea that allowing people to express their ideas freely and openly encourages good policies rather than poor ones. The second defence is grounded in a broader commitment to individual autonomy, to treating people equally, and to honour their right to free speech as a result. Whatever justification we may desire to use in our theorizing of the abstract right to free expression in India, punishing speech for allegedly scandalizing or reducing the authority of the court violates the Constitution. There hasn't been a single conviction for scandalizing the court in England, whose statutes of Contempt we've so carelessly imported, in more than eight decades. Additionally, the nation completely removed the offence of scandalizing the judiciary as a form of Contempt in 2013, following a suggestion by its Law Commission. By doing this, it supported Lord Denning's very accurate conclusion in a case where Queen's Counsel Quintin Hogg had faced Contempt proceedings for what was a scathing attack on the courts in Punch magazine. We will never use this jurisdiction to protect our dignity, let me state that right away, Denning wrote. 'That must be supported by stronger pillars...We neither dread nor despise criticism'. Because something much more significant is at risk. It is on par with the right to free expression itself.

## CONCLUSION

This project has provided us with the opportunity to read the constitutional debates, and get an insight into the reasoning, aspirations and potential worries of the members of the constituent assembly, and how they went about the process of debating and discussing the various articles and provisions that were to be introduced in the Constitution of the newly independent India. It has instilled in us an appreciation for the members of the assembly and TT Krishnamachari in particular. We reviewed his addition of Contempt of court along with the other reasonable restrictions to Article 19, analysed his contribution to the provision, and reviewed how the provision worked out after the constitution was adopted. We can conclude by saying that Krishnamachari's vision of Contempt of court as a reasonable restriction to the right to freedom of speech has persisted, and is not likely to be amended anytime in the foreseeable future.