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## Contempt of Court - Prashant Bhushan Controversy

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### ABSTRACT

*The concept of contempt of court is several countries and centuries older. In England it has been a common principle that seeks to protect the judicial power of the king. Later, disobedience, abstraction in implementing their directions and actions that showed disrespect towards them came to be punishable. The statutory basis for contempt of court is quite older as there were pre-independence laws for contempt in India. When the constitution was adopted, contempt of court was made as one of the restrictions on freedom of speech and expression. Article 129 of the Indian constitution confers powers on the Supreme Court to punish the contempt itself. Article 215 also confers corresponding powers on High courts to punish for contempt. And most importantly the Contempt of Courts Act, 1971 gives statutory backing to the idea.*

*Contempt of court is an offence of disobedience or disrespect towards a court of law and its officers in the form of conduct that opposes or challenges the authority, justice and dignity of the court. Contempt of court is a constitutional power vested with Supreme Court of India. The Supreme Court of India shall be a court of record and shall have all the powers of such a court including the power to punish for contempt itself. Superior courts of record have the power to punish contempt relating to judges of those courts and proceedings therein. The principal aim of the jurisdiction is to protect the dignity of the court and the due administration of justice.*

### I. TWEETS OF PRASHANT BHUSHAN:

1. Chief justice of India rides a 50lakh motorcycle belonging to BJP leader at Raj bhavan, Nagpur without mask or helmet, at a time when he keeps the Supreme Court in lockdown mode denying citizens their fundamental right to access justice.
2. When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal emergency. They will particularly mark the role of Supreme Court in this destruction and more particularly the role of the last 4 chief justices of India.

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## **II. CONTEMPT OF COURTS ACT, 1971:**

Contempt can be both civil and criminal contempt.

According to section 2 of contempt of court act, 1971

Civil contempt: willful disobedience to any judgement, decree, direction, order, writ or other process of court is said to be civil contempt of the court.

Criminal contempt: publication (either written, spoken) which scandalizes the court or lower the authority of, any court

- Prejudice or interfere with judicial proceedings
- Interfere or obstructs the administration of justice

Is said to be criminal contempt of court.

And also the act confers that, " advocate making libelous allegations against sitting judges of the High court and Supreme Court amount to interference with administration of justice". Undermining people's confidence in administration of justice and tend to bring the court into disrespect or disrepute is "criminal tantamount".

And the act also provides,

Sec 4 of this act permits fair and accurate report of judicial proceedings is not a contempt.

Sec 5 allows " fair criticism" ( by publishing any fair comment on the merits of any case which has been heard and finally decided) and mainly not to cross the limit of fairness.

## **III. PERSPECTIVE: 1**

Mr. Prashant Bhushan was convicted on August 14 on suo motu contempt action for his tweets of a picture of chief justice of India astride a high - end bike while the court was in 'lockdown' and another about functioning of the Supreme Court in the past 6 years. The court has to act only in the case where the attack is beyond the permissible limit. Freedom of speech and expression cannot be used to scandalize the institution. Unlike fair criticism based on the authentic material, attributing motives to judges who cannot resort to a public platform to clear their names amounts to contempt and cannot be ignored. When the criticism about the Supreme Court tends to create apprehension in the minds of people regarding integrity, ability and fairness of the judge, it amounts to contempt and cannot be protected under freedom of speech. The courts are the guardians of people's basic and fundamental rights over the world. Thus, comments on lowering their standards and creating an unbelief opinion on the institution is said to be prohibited in any manner. Thus scandalizing the court and their

officer's is amount to criminal contempt which is because people will lose faith in the rights guardian institution. The courts play an important role in delivering justice and protecting citizens rights. Thus, any comments or criticism which is in a way of lowering their standards and interfering with administration of justice is said to be a contempt and to be punished. In the case *Brahma Prakash v state of Uttar Pradesh*, the Supreme Court held that in order to constitute the offence of contempt of court, it was not necessary to specifically prove that an actual interference with administration of justice has been committed. It was enough if the defamatory statement is likely or in any way tends to interfere with proper administration of justice. In *PN Dua v Shiv Shankar*, the court observed that in a free marketplace of ideas, criticism about judges or judicial system should be welcomed, so long as such criticism do not "impair or hamper" the administration of justice. So, thus the restriction on freedom of speech and expression is a reasonable restriction in order to protect the dignity of the court and its members.

#### **IV. PERSPECTIVE: 2**

It is observed that the criticism of the judicial system and judges are to be welcomed and not to be considered as contempt. By criminalizing criticism of the court in sweeping and absolute terms, the provision raises prior restraint on speech on matters of public and political importance. Violating freedom of speech and expression of article 19 of Indian constitution, the act is said to be unconstitutional and against the basic structure of the Indian constitution. The other statement says, we cannot countenance a situation where citizens have to live in fear of courts' arbitrary power to punish for contempt of words or criticism on conduct of judges, in or out of the court. 'Truth' was considered as a defence against a charge of contempt. Because, there was an impression that the judiciary tends to hide any misconduct among its individuals in the name of protecting the name of the institution. It can be used as valid defence if it was in public interest and was invoked in a Bonafide manner. Thus, the constitution has given a special role to the apex court, as a protector of fundamental rights- B.R Ambedkar after all said that this power of the court is the crux of the constitution without which it could be nullity. But it is precisely because these words are true, that the court's decision to punish Bhushan for his criticism of the court is such a grave injustice.

#### **V. CONCLUSION:**

It is observed that the contempt of court act is an essential one in the modern democratic system, where everyone is ready to criticise anything on their own perspective. The minute line lying between the contempt of court and freedom of speech and expression is the only

thing we want to looking into. However, the reasonable restrictions imposed on article 19 of Indian constitution is subject to public interest and nation's security, so it cannot be termed as unconstitutional. And hence, the citizens cannot be given the absolute power to speak and act. "The absolute power corrupts absolutely", the courts are considered as the protector of people's rights. So, no comment or criticism should be raised against it and in a manner of lowering their standards among the public.

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