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Critical Analysis of the Prashant Bhusan Contempt Case and its Impact on India's Democracy

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ABSTRACT

On the eve of 74th Independence Day, Senior Advocate Prashant Bhushan was held liable for "serious contempt of court" by the Apex Court for publishing two tweets, which the court held to be "undoubtedly false, malicious and scandalous". While going through the judgment, it's easy to form opinioned ideas, that is, if one is of the opinion that freedom of speech and expression are of the utmost importance and must be protected at all cost, then they might find several reasons to criticize the judgment on many levels, but for those who believe that contempt of court laws are necessary so as to ensure the independence and proper administration of justice, they will uphold every aspect of the judgment. The arguments used in the judgement are not new, and in fact, no aspect of this situation is new or unique. We have in the past seen several cases of contempt of court. But like all other cases, the Prashant Bhushan case makes one wonder about the line which separates freedom of speech and contempt of court, which at times, does seem to get blurred.

In this paper, an attempt has been made to study the line between dissent and imputing motive to a judge in context of the present case by analysing the judgement through the facts and various evidences available in public domain.

Keywords: *Prashant Bhusan Contempt Case Review, Article 19, Judicial Accountability, Scandalization of Courts.*

I. INTRODUCTION

"*Let me say at once that we will never use this Jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it suppress those who speak against us. We do not fear criticism, or do we resent it. For there is something for more important at state."*

-Lord Denning, R.V. Commr. Of Police Ex. P. Blackburn [3]

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[3] R.V. Commr. Of Police Ex. P. Blackburn (1968)2 Q.B. 150

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On the eve of 74th Independence Day, Senior Advocate Prashant Bushan was held liable for "serious contempt of court" by the Apex Court for publishing two tweets, which the court held to be "undoubtedly false, malicious and scandalous".[4] While going through the judgment, its easy to form opiniated ideas, that is, if one is of the opinion that freedom of speech and expression are of the utmost importance and must be protected at all cost, then they might find several reasons to criticize the judgment on many levels, but for those who believe that contempt of court laws are necessary so as to ensure the independence and proper administration of justice, they will uphold every aspect of the judgment. The arguments used in the judgement are not new, and in fact, no aspect of this situation is new or unique. We have in the past seen several cases of contempt of court. But like all other cases, the Prashant Bhushan case makes one wonder about the line which separates freedom of speech and contempt of court, which at times, does seem to get blurred.

Freedom of speech and expression are often considered to be a defining feature of free democracy, where citizens are allowed to voice their opinions and concerns regarding the government and its organs, which includes the Judiciary, the most revered branch of government. But the court, in order to maintain their independence has often used their power (which is vested by virtue of Article 129 of Indian Constitution) to punish in cases of contempt of court. In such cases, courts punish those who lower the dignity of the court or interferes with administration of justice. One can decipher the discrepancy that may arise when talking about freedom of speech and contempt of court. Both are essential practices for the functioning of a democracy, and both offer benefit to the public at large. While freedom of speech and expression under Article 19(1)(a) ensure judicial accountability, contempt of court laws ensure judicial independence. But the issue tends to arise in deciding what may or may not qualify as contempt as the decision on what actually scandalizes the court, prejudices judicial proceeding and interferes with administration of justice, is actually for the judges to decide themselves. Thus, one is left to wonder whether the principle of "Nemo judex in Causa sua" comes to play. Thus, the law of contempt been a subject to criticism itself.

II. WHO IS PRASHANT BHUSHAN?

Mr. Prashant Bhushan was enrolled in the Bar council of Delhi in the year 1983. He is known for work in Public Interest litigation. His most notable work includes his work in the major scams of the country such as the 2g spectrum case, the Coalgate case, the fracas over the radia tapes, coal and iron mining scams etc. he is among the known central figures in cases that relate

[4] In Re Prashant Bhushan & Anr. Suo Moto Contempt Petition (Crl.) No. 1 of 2020.

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to human rights, the environmental protection, the matters dealing with the accountability of the public servants and anti-corruption.

III. ANALYSIS OF THE JUDGEMENT

Before, starting with the analysis of the substantive aspect of the judgement, it is pertinent to understand that the mere fact that one of the most notable advocate of the country who has been in practice since 37 years and played a key role in establishing the Committee on judicial Accountability (CJA) has been pulled up and made to explain his conduct by the apex court by the country is a testament to the strength of our democracy and our allegiance to the rule of law.

The judgement of this case can be broadly divided into two headings. Firstly, the procedural aspect of criminal contempt and secondly, the substantive aspect of criminal contempt.

(A) Procedural Aspect

In this judgement, the hon'ble apex court has explicitly clarified the confusion behind the jurisdiction and power of the Supreme court and high Courts in exercising contempt proceedings. This judgement has also clarified the ways of proceeding in the cases of criminal contempt. The Supreme Court of India derives its power from the Article 129, Article 142 and 215 of the Constitution although the law of law of contempt is governed by the Contempt of courts Act 1971 and whereas Article 142 could be subject to any law made by parliament, there is no such restriction as far as Article 129 is concerned. The powers of the Supreme Court to punish for contempt committed of itself is a power not subject to the provisions of the Act of 1971. Therefore, the only requirement is to follow a procedure which is just, fair and in accordance with the rules framed by the Hon'ble Court[5]. It has also been settled in this case that as far as Suo-moto proceedings are concerned, the consent of the Attorney general of India is not compulsory.

This judgement lays down the procedural aspects of Criminal Contempt extensively and will be referred by jurists in the future whenever any confusion relating the proceedings of a criminal contempt case arises.

(B) Substantive Aspect

The Supreme Court is not one of the pillars of the democracy but it is the central pillar. The Supreme court also oversees the High courts and the Lower Courts hence, it is important that the Supreme court is free of scandals and aspersions so that the people doesn't lose confidence

[5] In Re Prashant Bhushan & Anr. Suo Moto Contempt Petition (Crl.) No. 1 of 2020, Para 29

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in the institution and our democracy is sustained. It is also important to understand that dissent and criticism is also one of the vital parts of a democracy. to err is human and it is only through discussion and bringing in various perspectives of people from various walks of their life can we bring in into notice all the perspectives so that we can form an inclusive society where everyone is accounted and acknowledged for. Another well settled principle is that power tends to corrupt and absolute power tends to corrupt absolutely and that's the reason why it becomes more important to constantly ask questions to those in power especially in our country the preamble of the constitution of which starts with "we the people" which means that the power lies in the hands of the citizens. However, there is a fine line between criticism and allegation and to decide on such cases we will have to objectively analyse and observe all the circumstances of the particular case.

It has been well settled in law and reiterated several times in the judgement that constructive criticism exercising the rights conferred on a citizen by Article 19 (1) is welcome in a democracy but the attempts to 'scandalize' the courts, 'imputing motive' to the work of the judges in and creating an obstruction in the administration of justice will entitle the court to invoke the contempt jurisdiction and it will fall within reasonable restriction under Article 19 (2).

The word scandalized isn't defined anywhere in the contempt of courts act 1971 but it is defined in the oxford's learner's dictionary as: to do something that shocks people very much[6]. The same word is defined in Cambridge dictionary as: to shock someone with an action or opinion thought of as immoral or wrong[7]. From the two definitions it is clear that it is a broad term and to constitute contempt, the word or action should be considered immoral or wrong in nature and it should be done with an intention to shock someone. We will rely on the elements of these definitions while analysing the judgement.

In the judgement, the question that was posed while analyzing the two tweets by Mr. Prashant Bhusan as "whether the said tweets are entitled to protection under Article 19(1) of the Constitution as a fair criticism of the system, made in good faith in the larger public interest or not[8]." The two tweets which are in question in this present case has been sub-divided and dealt with separately and therefore, we will also analyze them in that manner.

[6] Oxford's Learners Dictionary, Available at: https://www.oxfordlearnersdictionaries.com/definition/english/scandalize?q=scandalize
[7] Cambridge Dictionary, Available at: https://dictionary.cambridge.org/dictionary/english/scandalize
[8] In Re Prashant Bhushan & Anr. Suo Moto Contempt Petition (Crl.) No. 1 of 2020, Para 61

1. First Tweet

The first part of the first tweet states, that 'CJI rides a 50-lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without a mask or helmet'. The first part of the tweet was held to be made against the CJI as a person and hence it is left outside of the ambit of the criminal contempt law as per the established laws.

The second part of the tweet states, 'at a time when he keeps the SC in lockdown mode denying citizens their fundamental rights to access justice' since the second part of the tweet was held to be made against the CJI as the administrative head of the judiciary of the country, it falls within the ambit of the criminal contempt law as per the established laws.

(a) The Bench

The contention of the bench is that "The said tweet is capable of giving an impression to a layman, that the CJI is enjoying his ride on a motorbike worth Rs.50 lakh belonging to a BJP leader, at a time when he has kept the Supreme Court in lockdown mode denying citizens their fundamental right to access justice[9]". It was also contended that "the date on which the CJI is alleged to have taken a ride on a motorbike is during the period when the Supreme Court was on a summer vacation" and even during the said period, the vacation Benches of the Court were regularly functioning whereas on account of COVID-19 pandemic the physical functioning of the Court was required to be suspended and immediately after suspension of physical hearing, the Court started functioning through video conferencing. From 23.3.2020 till 4.8.2020, various benches of the Court have been sitting regularly and discharging their duties through video conferencing. the hon'ble court also submitted that the total number of sittings that the various benches had from 23.3.2020 till 4.8.2020 is 879. During this period, the Court has heard 12748 matters including that of Mr. Prashant Bhusan himself. In the said period, this Court has dealt with 686 writ petitions filed under Article 32 of the Constitution of India. Therefore the Hon'ble court held that the statement, that the CJI has kept the SC in lockdown mode denying citizens their fundamental rights to access justice is patently false.

(b) Analysis

To understand the context and circumstances and the facts of the case in a better way, we need to take into account the following facts:

i. Though it wasn't mentioned in the judgement the Hon'ble Supreme Court of India decided to postpone the judgement by five weeks this year[10]. This fact speaks volumes about

[9] In Re Prashant Bhushan & Anr. Suo Moto Contempt Petition (Crl.) No. 1 of 2020, Para 62

[10] PTI, Supreme Court postpones summer vacation by five weeks, says it will function till 19 June, The Print,

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the professional commitment and ethics of the officers of the court.

ii. During that time, the hon'ble Supreme Court of India was already under criticism for their delay of several weeks in taking suo-moto cognizance of the migrant crisis in India[11].

iii. The Chief Justice of India is a public figure. His actions and conduct influence millions of people globally. Therefore, every action of him will understandably be under public scrutiny by his following. Hence in such a time when the covid cases were rapidly rising in the country along with community spread and when the people were getting accustomed to the habit of wearing a mask, it is understandable that him not wearing a mask around people will be questioned since he himself is one of the fundamental units of the authority.

iv. The photo was taken at a ceremony which the CJI was attending at Raj Bhavan in Nagpur and the two-wheeler was brought to him for a demo, during which CJI Bobde removed his mask to apparently see the fittings better. He sat on it for a few minutes "to take a feel of the bike" without riding it[12].

v. The controversy regarding the ownership of the bike isn't well settled and hence we won't comment on that.

vi. The Supreme Court of India was already surrounded and recovering at the same time from the various controversies surrounding around its allocation and listing of cases by the registry.

Now the question arises is that when such facts are available in public domain and are a common knowledge among the public, does the tweet by Mr. Bhusan a senior lawyer in the fraternity, which is not an exclusive revelation by itself but it was already in various discussions among the public, is immoral or wrong in nature and whether there is an element or intention of shock value to that tweet when the facts are already in common knowledge? Does this shake the confidence of the people on the judiciary?

In our considered view, the answer to the first question is negative as Mr. Bhusan was reiterating what was already in public domain nor did he primarily leak the pictures and its details. The answer to the second question is also in negative since the past conducts of the courts which we will be extensively dealing with in the next tweet along with the existing facts

Available at: https://theprint.in/judiciary/supreme-court-postpones-summer-vacation-by-five-weeks-says-it-will-function-till-19-june/422689/

[11] Apoorva Mandhani, SC takes note of migrant crisis, tells Centre & states to give free transport, food, shelter, The print, Available at: https://theprint.in/judiciary/sc-takes-note-of-migrant-crisis-tells-centre-states-to-give-free-transport-food-shelter/429780/

[12] Apoorva Mandhani, Photos of Justice Bobde astride a hunky Harley Davidson reveal different side to India's CJI, The Print, Available at: https://theprint.in/india/photos-of-justice-bobde-astride-a-hunky-harley-davidson-reveal-different-side-to-indias-cji/450849/

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of the matters were already in public domain and there were already discussions and controversies surrounding it. Therefore, when both the sides of the coin are visible to the public, it is a matter of choice and individual opinion regarding the status of one's faith to the judiciary and Mr. Bhusan's tweet wouldn't have made much of a difference if not, no difference at all.

2. Second Tweet

As per Mr Bhusan, the second tweet is divided into three distinct parts. The first part of the tweet is that "democracy has been substantially destroyed in India during the last six years. The second part is his opinion, that the Supreme Court has played a substantial role in allowing the destruction of the democracy and the third part is his opinion regarding the role of the last 4 Chief Justice's in particular in allowing it[13]."

The bench rightfully did not hold any observation regarding the first part of the tweet since it was a matter of politics. The second or third part is however dealt with in this judgement.

(a) The Bench

The Bench held that the criticism is against the institution of the Supreme Court and the institution of the CJIs. while considering as to whether the said criticism was made in a good faith or not the attending circumstances are also required to be taken into consideration. One of the attending circumstances is the extent of publication. The publication by tweet reaches millions of people and as such, such a huge extent of publication would also be one of the factors that requires to be taken into consideration while considering the question of good faith. Another circumstance is, the person who makes such a statement. Since, Mr. Bhusan from the last 30 years has been practicing in the Supreme Court and the Delhi High Court and has consistently taken up many issues of public interest concerning the health of our democracy and its institutions and in particular the functioning of our judiciary and especially its accountability. Mr. Bhusan being part of the institution of administration of justice, instead of protecting the majesty of law has indulged into an act, which tends to bring disrepute to the institution of administration of justice and he is expected to act as a responsible officer of the Court. The court held that the tweets couldn't be said to be a fair criticism of the functioning of the judiciary and the tweet tends to shake the public confidence in the institution of the judiciary. The Court further didn't go into the correctness of the tweet and held that they are only concerned with the damage that is sought to be done to the institution in administration of justice.

[13] In Re Prashant Bhushan & Anr. Suo Moto Contempt Petition (Crl.) No. 1 of 2020, Para 65

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(b) Analysis

To understand the context and circumstances and the facts of the case in a better way, we need to take into account the following facts:

1. On January 12 2018, in an unprecedented event, four senior-most judges of the supreme court of India held a press-conference expressing their grievances in public regarding the functioning of the courts and the way in which the cases are allotted to the benches of choice by the then CJI Justice Deepak Mishra as well as the 'Past-CJIs[14]'. Further, they also expressed their grievance over the mysterious death of judge B.H. Loya, who was hearing the Sohrabuddin case in a special court[15]. Justice Ranjan Gogoi also went ahead and suggested that the the allocation of judge Loya case to Justice Arun Mishra-led bench was problematic.

2. On April 2019, former chief justice of India Mr. Ranjan Gogoi was accused of sexual harassment where it was alleged that the Chief Justice of India had made unwelcome sexual advances at the victim and when she resisted, she was subjected to frequent transfers and was eventually dismissed. The victim further alleged that the CJI was persecuting her family as well, and had caused the suspension of her husband from service of Delhi police. It was heard with a bench composition of CJI Gogoi, Justice Arun Mishra and Justice Sanjiv Khanna[16]. Though there's much more to this incident in public domain, the most dramatic of them all is that the victim who was initially dismissed was reinstated by the supreme court immediately after chief Justice Mr. Ranjan Gogoi's retirement[17]. The case is widely critised to violate the founding priciple of justice i.e. ***Nemo judex in causa sua*** which means that no man shall be a judge in his own case.

3. The tenure of the Ex-Chief justice of India Ranjan Gogoi was heavily surrounded by controversies regarding the way he dealt with various high-profile cases and the procedures in those cases[18] which are all available in public domain are matters of public knowledge and are

[14] The print Team, The Chief Justice is selectively assigning cases to benches of his preference: Full text, The Print, Available at: https://theprint.in/india/governance/letter-justice-chelameswar-gogoi-lokur-kurian-joseph-chief-justice-india/28210/

[15] Maneesh Chhibber, A hurried move in Judge Loya case can only make Amit Shah more powerful, The print, Available At: https://theprint.in/opinion/a-hurried-move-in-judge-loya-case-can-only-make-amit-shah-more-powerful/349420/

[16] Live law Network, CJI Sexual Harassment Case : A Timeline, Live law, Available at: https://www.livelaw.in/top-stories/cji-sexual-harassment-case-timeline-144830

[17] Dhananjay Mahapatra, SC reinstates woman employee who accused ex-CJI, The Times of India, Available at: https://timesofindia.indiatimes.com/india/sc-reinstates-woman-employee-who-accused-ex-cji/articleshow/73532916.cms

[18] Manu Sebastian, CJI Gogoi: A term of misses and omissions, Live law, Available at: https://www.livelaw.in/columns/cji-gogoi-a-term-of-misses-and-omissions-149855

widely criticized to be violations of Rule of law. However, arguably the most prominent of all the criticisms is the unexpected delays of various cases of public importance arbitrarily.

4. The Registry of the Supreme Court of India which is also considered to be as backbone of the Supreme Court of India is also stained with various controversies. The main controversy is the way the case are listed. On 26 january, 2019, the Registry was pulled up by the registrar's court for non-compliance[19]. The Registry was also pulled up due to their delay in issuance of notice to the accused in the infamous rape case of Unnao by then CJI Mr. Gogoi[20]. In a different case, Mr. gogoi in open court remarked the registry over a deleted case that "you come back after 2 hours with some cooked-up story...that this happened or that happened[21]". Inspite of being an established pattern of behaviour, however coincidentally in a bench headed by Justice Arun Mishra, dismissed a petition alleging adoption of a "pick and choose" policy by the Registry[22]. Interestingly, there was no observation about the past conducts of the registry in the judgement nor there was any explanation as to why matters like the CAA-NRC and the Habeus Corpus writs of various constitutional matters have not been listed in spite of claiming of listing matters of national importance. However, on the very next day The Supreme Court directed its registry to explain why the petition filed by businessman Vijay Mallya, who has sought review of its 2017 order holding him guilty of contempt of court was not listed for last three years[23].

The primary question which arises from this is that whether the unexplained conduct of the court in the recent times which is in itself has been revealed by the learned officers of the courts which include the ex CJI and senior most judges of the SC itself create an obstruction of justice? Secondly, when those cases themselves haven't been properly investigated by the court and not explained/ communicated to the public, don't they themselves hold the potential to shake the confidence of people on the judiciary? The last question that arises is that is truth an evidence in the cases of criminal contempt?

The answer to the first and second question is in affirmative. Globally India is ranked 69th is the rule of law index, 41st in the constraint of government power index, 85th in the absence of

[19] Ashok Kini, Even the Registry Is Taking SC Orders So Lightly? Registrar's Court Pulls Up Registry, Live law, Available at: https://www.livelaw.in/news-updates/sc-registrar-pulls-up-registry-142422

[20] Live law News Network, Unnao Tragedy : CJI Seeks Report From SC Registry On Delay In Forwarding Letter By Rape Survivor's Family, Live Law, Available at: https://www.livelaw.in/top-stories/unnao-tragedy-cji-seeks-registry-report-rape-survivors-family-letter-146810

[21] Mehal Jain, CJI Comes Down On SC Registry Over Deletion Of Items From Cause List, Live Law, Available at: https://www.livelaw.in/top-stories/cji-comes-down-sc-registry-over-deletion-items-cause-list-146370

[22] Live Law News Network, Arnab Goswami Case Was Listed Urgently As It Pertained To Liberty And Freedom Of Media, Says SC, Live law, Available at: https://www.livelaw.in/top-stories/arnab-goswami-case-listed-liberty-freedom-of-media-159497?infinitescroll=1

[23] PTI, Supreme Court Demands Explanation From Registry Why Vijay Mallya's Plea Not Listed For 3 Years, NDTV, Available at: https://www.ndtv.com/india-news/supreme-court-demands-explanation-from-registry-why-vijay-mallyas-plea-not-listed-for-3-years-2249357

corruption index, 84th in the fundamental rights index, 114th in order and security index, 74th in regulatory enforcement index, 98th in Civil justice Index, 78th in Criminal justice index[24]. Clearly, it cannot be said that there was a motive to cast aspersions or scandalize the court in a democracy who otherwise has a clean record. Especially when the various conducts of the courts itself raise eyebrows globally and everything is in public domain, are only the tweets of Mr. Prashant Bhusan responsible for creating disaffection and disrespect for the authority of the court by creating distrust in its working?

The answer to the third question is affirmative. Truth is valid ground of defence as per an amendment to the Contempt of Courts Act, 1971[25]. The Constituion bench of the Supreme court has also held that "The amended Section enables the court to permit justification by truth as a valid defence in any contempt proceedings for purging out of contempt if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide[26]". While submitting his affidavit in the case, Mr. Bhusan submitted a 142-page long affidavit proving his claim regarding the corruption of the CJIs[27] which contained most of the facts we have discussed above in our analysis. The bench didn't delve into the truth of the facts which in our considered opinion is a clear violation of natural justice itself. It is contradictory to the bench's own reliance on the various judgements[28]. It is also contradictory to the submission of the learned amicus Mr. Siddhart Luthra who submitted that "The only requirement is that the procedure followed is just and fair and in accordance with the principles of natural justice[29]". Therefore, in our considered view, it is majorly the conduct of the judiciary in the past and the image of the judiciary in public domain rather than Mr. Bhusan's tweet itself who tends to distort the image of the judiciary in the minds of the people. The question which arises from this is will the court persecute every individual who has a role in the various conducts?

IV. CONTEMPT OF COURT LAWS IN OTHER DEMOCRACIES

When analysing the Indian judgements, there is not much deviation from the previous stand taken by Court. But on analysis of the approach taken by other older democracies, one could

[24] The World Justice project Report, Available at: https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

[25] The Contempt of Courts (Amendment) Act, 2006, https://indiankanoon.org/doc/1068778/

[26] J. Venkatesan, Truth can be treated as defence in contempt proceedings: SC, The Hindu, Available at: https://www.thehindu.com/news/national/truth-can-be-treated-as-defence-in-contempt-proceedings-sc/article6246286.ece

[27] Prashant Bhusan Affidavit, In Re Prashant Bhushan & Anr. Suo Moto Contempt Petition (Crl.) No. 1 of 2020, Available at: https://www.livelaw.in/pdf_upload/pdf_upload-379389.pdf

[28] In no particular order, In Re: S. Mulgaokar, Arundhati Roy, in Re, Dr. D.C. Saxena vs. Hon'ble the Chief Justice of India, In re: Vinay Chandra Mishra, Pritam Pal vs. High Court of Madhya Pradesh, Jabalpur through Registrar, etc.

[29] In Re Prashant Bhushan & Anr. Suo Moto Contempt Petition (Crl.) No. 1 of 2020, Para 7

see the practice of 'taking the higher road' has been adopted by the courts. In the landmark judgement of A-G v. Observer Ltd.,[30] the House of Lords held that publication of certain text by a spy, was in breach of his duty. After the judgement, British newspaper, Daily Mail published in an article with the faces of the three judge's upside down and caption as, "You Old Fools". Judge in the case, Lord Templeman, refused to initiate any contempt proceeding. After the Brexit judgement again, Daily Mirror published a story titled "Enemies of People", where the editorial went on to call the judges, "out of touch with the country".[31] Again, no contempt case was initiated. England is a rather beautiful example of how the judges of the country have handled criticism. In, In the matter of special reference from Bahamas Island,[32] after statements made by a man against the Chief Justice were published in a newspaper, wherein he called the judge "…incompetent… and a shirker of his work, and suggesting that it would be a providential thing if were to die", the court held that while the statement might be subject to libel, it definitely was not in any way construed to obstruct or interfere with the course of justice.[33] In the United Kingdom, the law now stands abolished and was last invoked in 1930.

In the United States, in the case of Bridges v. California,[34] Justice Hugo Black made a compelling observation, stating that respect for judiciary cannot be earned by shielding judges.[35] Additionally, the court also held that one cannot be punished for contempt unless and until there is a "clear and pertinent danger." Similarly, in the Canadian case of R. v. Koptya,ș[36] a barrister had been charged with contempt of court after he criticized a judgement against his client, calling it a "mockery of justice" and that it "stink to high hell". The Court noted that, "…Some criticism may be well founded, some suggestions for change worth adopting. But the courts are not fragile flowers that will wither in the hot heat of controversy…. The courts have functioned well and effectively in difficult times. They are well-regarded in the community because they merit respect. They need not fear criticism nor need to sustain unnecessary barriers to complaints about their operations or decisions." In Attorney-General for New South Wales v. Mundey,[37] the court deduced that "there is no more reason why acts of courts should

[30] A-G v. Observer, (1990) 1AC 109 (HL).
[31] James Black, Enemies of the People: Fury over 'out of touch' judges who have 'declared war on democracy' by defying 17.4 m Brexit voters and who could trigger constitutional crisis, (Aug. 15, 2020, 10:00AM), https://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html.
[32] In the matter of Special Reference from Bahamas Island, (1893) A.C. 138 (P.C.)
[33] *Id* at 31.
[34] Bridges v. California, 314 U.S. 252 (1941).
[35] *Id* at 33.
[36] R v. Koptya (1987), 62 OR (2d) 449.
[37] Attorney-General for New South Wales v. Mundey, 20 NSWLR 650.

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not be trenchantly criticized than acts of public institutions".[38]

But in contrast to such judgements, there are also quite some judgements where courts have pointed out the significance of contempt law. In Chokolingo v. AF of Trinidad and Tobago,[39] it was held that scandalizing the court has been defined as "…a convenient way of describing a publication which, although it does not relate to any specific judge, is a scurrilous attach on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice."[40] In case before the Supreme Court of Zimbawe, In Re: Patrick Anthony Chinasama,[41] the court held that unlike others, judges don't get a chance to reply to criticisms or defend themselves, which is why such laws are important for their protection.

In a case before the European Court of Human Rights, Barford v. Denmark,[42] applicant was charged with contempt for stating that the judges were biased in a particular case. Here the court convicted the applicant as they saw restriction on freedom of expression as necessary in a democratic society, as the State has the legitimate interest in protecting the reputation of the judges.

Thus, it would be unfair to say that the approach taken by Supreme Court in Prashant Bhushan's case is out of the box or completely against the accepted norms, but at the same time there are myriad of judgements which show how judges, on several occasions have taken such contempt in lighter attitude.

V. CONCLUSION: THE WAY AHEAD

In our analysis of the judgement, we felt that the judgement was drafted with a pre-set mind since the decision is itself contradictory to the many authorities relied on during this judgement. We also feel that keeping away the surrounding facts in deciding the case and not delving into the truth of the evidence Mr. Bhusan provided in his affidavit is like the action of an ostrich burying its head in the sand and the same has the potential of setting a precedent which leaves a bad taste to our future of democracy. it is pertinent to understand that as held in the judgement itself that the emergency is a dark period of our democracy, it is every citizen's role to question the conduct of the authority and hold it accountable from time to time so that we don't find ourselves in a similar situation again. If someone as Prominent as Mr. Bhushan with such an

[38] *Id* at 36.
[39] Chokolingo v. AF of Trinidad and Tobago, [1981] 1 All ER 244.
[40] *Id* at 38.
[41] In Re: Patrick Anthony Chinamasa, S.C. 113/2000, 6 November 2000.
[42] Barford v. Denmark, 22 February 1989, Series A No. 149, 13 EHRR 393.

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illustrious career and a senior member of the fraternity and a senior officer of the court himself, is persecuted for questioning the institution with questions which are of public institutions, it will send a wrong message to the younger members and thus will be detrimental to the institution of the democracy itself. Yes, it is essential that the Hon'ble supreme court needs to be kept away from scandalizations and aspersions however, if the hon'ble court is kept away from accountability and criticism, it will make the institution weaker from the inside and will push us back into the dark ages once again.

We found also found the judgement to be of conservative in nature. In our opinion the hon'ble court itself should have initiated an internal enquiry and investigations to set to rest the all the allegations and suspicions surrounding its conduct. And if things were found to be out of order the same could have been corrected. This would not only have set a positive example for all the courts of the future around the globe but would have gone a long way in ensuring that the faith in the Institution by the people is upheld similar to the Senate Intelligence Committee report on CIA torture in USA[43], because it is only when we acknowledge our shortcomings can we take measures to overcome it. In a time when criminal contempt of court has been done away with by major matured democracies around the world, we would like to see more liberal interpretations of the same law from our hon'ble courts in the future and maybe when we do that, make the conduct of the courts transparent and hold our higher institutions accountable, maybe we can find ourselves among the top ranked nations in terms of adherence to the rule of law.

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[43] Senate Intelligence Committee report on CIA torture, Available at: https://www.intelligence.senate.gov/sites/default/files/documents/CRPT-113srpt288.pdf

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