

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 5 | Issue 6

2022

© 2022 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Does Contempt Conviction threaten Free Speech in India?

AASTHA SAHU¹

ABSTRACT

Many of the rulings in commencing contempt cases highlighted the condition of freedom of free speech in India - a liberty shattered by colonial relics such as the statute on contempt, which we have foolishly adopted as a purported requirement to maintain the majesty of our courts. As much as the Supreme Court cherishes the public's trust in it, it should also trust the people not to create views about the Court based on a few jokes on social media or any other forum. Truth was rarely regarded as a defense against a charge of contempt for many years. There was an idea that the judiciary tended to conceal any misbehavior among its individual members in order to maintain the institution's reputation. The act of contempt of court is neither rational nor consistent with the fundamental requirements of a legitimate government. India's courts have frequently used their contempt powers to penalize dissent on the alleged grounds that such speech undermines or scandalizes the judiciary's authority. However, the court has rarely done a strict investigation of whether those activities represented any genuine threat to – or interfered in any direct way with – the administration of justice.

Is the act still legitimate after all of these arguments? Yes, because India continues to have a large number of criminal contempt cases in comparison to other nations, which cannot be disregarded. There are numerous situations where the need for this act has been proven, while in some cases the court's choice to exercise its powers has been termed unjustified.

In this article, I have concentrated on several cases when the authority of contempt of court was exercised but was not justified in the first place and thus violated fundamental rights, particularly freedom of speech. I will also demonstrate that does contempt conviction endanger free speech in India?

Keywords: Contempt Of Court, Freedom of Speech, the Contempt of Court Act 1971. The Indian Constitution, Fundamental Rights.

I. INTRODUCTION

- **Speech freedom**

One of the most essential rights guaranteed by democratic governments is the freedom of speech

¹ Author is a Student at Dr. Harisingh Gour Central University, Sagar, Madhya Pradesh, India.

and expression. Indian courts have liberally interpreted the scope and content of Article 19(1) (a), making it subject solely to the restrictions permitted by Article 19(2). Aside from support, there is also criticism of how this freedom of speech is being exercised.

Freedom of speech is a basic human right that must be protected in democratic society. However, there is a troubling global trend among governments that unjustifiably restricts freedom of speech by targeting journalists, demonstrators, and anyone who are seen to be disagreeing from official viewpoints. Laws in Western democracies also restrict opposition movements and, through obligatory metadata retention plans, limit press freedom and free expression. Civil societies throughout the world will take a proactive approach to defending free expression. This is critical for improving people's lives and maintaining healthy democratic communities.

- **Contempt of court**

The term "contempt of court" derives from the word "Contemptus Curiae," which has been recognized in English law since the 12th century. Lord Diplock defined contempt of court as:

“Contempt of Court is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or inhibit citizens from availing themselves of it for the settlement of their disputes.”

The legal rules in India for contempt of court are a legacy of the British administration. The first Contempt of Court Act was established in 1926 to increase openness and penalty for contempt. However, this Act had no provisions for contempt of courts lower than the Chief Courts and the Judicial Commissioner's Court. As a result, it was eventually repealed by the Contempt of Courts Act of 1952. This Act, on the other hand, did not please the public. It was widely held that the current legislation on contempt of court was vague, imprecise, and inadequately delineated. To alleviate the prevalent concerns, a committee was formed in 1961 under the leadership of H. N. Sanyal, the then-Additional Solicitor. This committee conducted a thorough review of the legislation on contempt and its consequent difficulties in the then-existing legal framework. These suggestions included the need to safeguard the prestige and dignity of courts, as well as an unhindered process of justice administration. These proposals were adopted into the Contempt of Courts Act, 1971. The Act distinguishes between civil and criminal contempt. Civil contempt is defined as willful defiance of a court order. Criminal contempt includes any conduct or publication that: (i) "scandalizes" the court, (ii) biases any judicial procedure, or (iii) otherwise interferes with the administration of justice. The term 'scandalizing the Court' refers to comments or publications that have the effect of eroding public

trust in the court.²

There is a fine line between criticizing an institution and humiliating it!

Whether a statement constitutes criminal contempt would have to be determined based on the facts of each individual case. Just because one finds a case of contempt of court unjustifiable does not mean that every case will be the same or will be assessed in the same way.

Following a Law Commission study, the charge of scandalizing the courts was eliminated in the United Kingdom in 2013. This is significant since the Indian law of contempt of court is based on common law. In the famous Spycatcher case, an English newspaper ran a cartoon of three judges with the phrase "You Old Fools."

Lord Templeman disputed the start of contempt proceedings, wittily responding that he was certainly an elderly man, but whether he was a fool was a question of public opinion, which he did not believe.

The United States of America has currently softened down the contempt legislation via a number of decisions that declare that the dignity of the courts cannot be maintained by suppressing public opinion or restricting open debate about the Court.

Contempt powers can only be invoked if there is a clear and present risk to the resolution of a case. Courts in Canada are likewise accessible to criticism unless there is an urgent threat to the administration of justice. Nevertheless, India every year, several charges of contempt of court are brought, and India has not considered amending the statute as a result.³ The Act's continued relevance is supported by a large number of cases.

However, there are certain instances where individuals criticizing went too far and became humiliating, which cannot be accepted. The public has taken note of Prashant Bhushan's case, as well as many other cases, raising the question of whether this statute undermines free expression. However, we cannot deny that when dealing with these types of instances, freedom of speech is constantly jeopardized, which should not be the case.

II. FREEDOM OF SPEECH TRUMPS CONTEMPT OF COURT!

Why is this so? Because, if we look at several notable cases where the court viewed a few statements by journalists, lawyers, activists, or anyone else as contempt of court, even if they did not scandalize or disgrace the court, the court was tempted.

² The hindu, <https://www.thehindu.com/news/national/the-hindu-explains-what-is-contempt-of-court/article32249810.ece>

³ PRS legislative research, <https://www.prsindia.org/report-summaries/review-contempt-courts-act-1971>

Is it permissible for the court to interpret the definition of contempt every time they wish to transform any objection, perspective, opinion, or criticism into contempt? The contempt decision in the Prashant Bhushan case may send a message to India's courts that any criticism of the judiciary may result in criminal charges.

The International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, allows for limits on the right to free expression to preserve "public order," but only by law and for a justifiable reason. According to the United Nations Human Rights Committee, which monitors state compliance with the ICCPR, contempt of court proceedings and any penalty imposed "must be demonstrated to be justifiable in the exercise of a court's jurisdiction to ensure orderly processes?"

The Contempt of Courts Act in India should be amended to align with international human rights standards.⁴ The people are paramount in a democracy, and all authorities, including the President and Prime Minister of India, other ministries, judges, lawmakers, bureaucrats, police, and the army, are servants of the people. People have the right to criticize judges because they are the masters and judges are their slaves, just as a master has the right to criticize his servant.⁵

Even if there is evidence of contempt of court, a judge is not obliged to take action. Former Supreme Court Justice V.R. Krishna Iyer famously described contempt law as "having a broad and roving jurisdiction, with unknown bounds; contempt legislation, regardless of the public interest, may unintentionally trample on civil rights." In *S.Mugolkar v. Unknown* (1978), the Supreme Court held that the judiciary cannot be immune from fair criticism.

Individual societies and globalized human society as a whole are evolving toward a consensus of a future in which individuals have increased autonomy, rights, and dignity. Healthy and constructive criticism is essential components of democracy's evolution. In this view, concentration should take precedence over "court decorum," but not mindlessly.

In this context, there is a need to reconsider the necessity for a criminal contempt legislation, where India can learn from Britain, which eliminated the charge of scandalizing the judiciary as a form of contempt of court in 2013 due to the law being ambiguous and incompatible with freedom of expression.

What distinguishes a criticism of the judiciary's rulings from the humiliation of a basic pillar? What distinguishes an insult from a simply opinion? What makes disagreeing with the court's

⁴ Human rights watch, <https://www.hrw.org/news/2020/08/19/india-contempt-conviction-threatens-free-speech>

⁵ The economic times, <https://economictimes.indiatimes.com/news/politics-and-nation/contempt-law-threatens-freedom-of-speech-markandey-katju/articleshow/46183470.cms?from=mdr>

conduct an act of contempt for it?

All of these questions must unquestionably be addressed!

Lawyer Prashant Bhushan, actor Swara Bhaskar, and stand-up comedian Kunal Kamra have all been accused of disrespecting and degrading the courts or the judges who rule over them. They've all been judged by the murky standard of "contempt." In their own unique ways, they all criticized the judiciary or its acts. The reasons for and manner in which their viewpoints were presented differed. If the comment had been uttered by an ordinary person rather than a celebrity, the individual would have gone unpunished.

In August, India's attorney general, KK Venugopal, touched on this quandary when dismissing contempt proceedings against actor Swara Bhaskar. "She did not say anything that would scandalize or seek to scandalize, or reduce or tend to lower the Supreme Court's authority," he added of Bhaskar's comments on the Ayodhya verdict.

One may argue that the tweets for which Kamra has been chastised were the product of irritation and dissatisfaction with the conduct of the courts. Many Indians have recently expressed similar sentiments in response to historic decisions, dissident voices being silenced, or severe policies. The outpouring of rage has been tangible. It's hardly surprising that some people feel the comedian's tweets are just as legitimate as any other voice of dissent. They could even find his tweets funny.

Many of India's fundamental liberties are at danger today, with a large number of activists, journalists, and artists imprisoned awaiting trial. It is obvious that voices must be raised in opposition to this. Is there, however, a correct way to do so?

The definition of criminal contempt is couched in exceedingly broad terms, allowing the courts to impose additional limitations on free press at their discretion.

To begin with, it is totally dependent on the judges' beliefs and predispositions. Furthermore, the Act fails to recognize one of the fundamental principles of natural justice, namely, *nemo debet esse iudex in propria causa*, or no one should be a judge in his own matter. Thus, in contempt proceedings, the court assumes the roles of judge, jury, and executioner, which frequently results in unfavorable outcomes. Third, Section 14 of the Act enables the court to punish suspected acts of contempt summarily. In some occasions, judges have used this power in the heat of the moment to punish persons even though the contemptuous act was minor.

Another troubling tendency is the court's proclivity to interpret personal attacks on their character as contempt. It is sometimes overlooked that the rule of contempt is intended to

safeguard the institution of the court from scurrilous, vilificatory, and baseless assaults on the institution as opposed to the individuals who comprise it.

Unfortunately, in this nation, contempt of court is likewise plagued by the twin sins of partiality and nepotism. Thus, while the court would not hesitate to arrest a poor Muslim for asking compassion from a Muslim judge in the name of religion for contempt, it did not take any action against Shiv Sena supremo Bal Thackeray despite allegations of fraudulent election conduct by the judges. Unfortunately, the act has been used to settle conflicts and suppress critics of the Court. It has even impeded the honest reporting of corruption in the judiciary.

III. CONCLUSION

Dissent has always been critical to the country's democratic growth. It has led in laws being modified, judgments being re-evaluated, and liberties being gained. Citizens who express their dissatisfaction with the judiciary do not weaken the institution; rather, they are critical to its improvement.

The letter of the law, its interpretation by the judiciary, and its application in the actual world has always been three competing perspectives. This is also true of the law of contempt. Legal clarity has always been a function of time.

Disagreeing with the system's judgments is our right, our responsibility, and is frequently a weight carried by critics and artists in society. However, it is also important to ensure that the judiciary's authority is not jeopardized in the process.

How many citizens express their dissatisfaction with the system's activities without destroying it? While we attempt to figure out where the boundary is, we can't help but wonder whether the expanding contempt of court actions doesn't reflect a growing contempt for criticism.
